

## BASIC LEGAL ETHICS NOTES

### Lawyer's Oath

I, do solemnly swear that I will maintain allegiance to the Republic of the Philippines, I will support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients; and I impose upon myself these voluntary obligations without any mental reservation or purpose of evasion. So help me God.

## PRACTICE OF LAW

### Practice of Law

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### I. CONCEPT OF THE PRACTICE OF LAW

#### Admission to the Bar

Who is admitted to the Bar? (Rule 138 of the Rules of Court)

1. One who is admitted to the bar
2. One who is admitted according to the provisions of the Rules of the Court
3. Good and regular standing

#### Rule 138 of the Rules of Court

Section 1. Who may practice law. — Any person heretofore duly admitted as a member of the bar, or hereafter admitted as such in accordance with the provisions of this rule, and who is in good and regular standing, is entitled to practice law.

#### Definition of the Practice of Law

#### Black's Dictionary

The rendition of services requiring the knowledge and the application of legal principles and technique to serve the interest of another with his consent. It is not limited to appearing in court, or advising and assisting in the conduct of litigation, but embraces the preparation of pleadings, and other papers incident to actions and special proceedings, conveyancing, the preparation of legal instruments of all kinds, and the giving of all legal advice to clients. It embraces all advice to clients and all actions taken for them in matters connected with the law.

An attorney engages in the practice of law by maintaining an office where he is held out to be an attorney, using the letterhead describing himself as an attorney, counseling clients in legal matters, negotiating with opposing counsel about pending litigation, and fixing and collecting fees for services rendered by his associate.

#### Cayetano vs. Monsod

Practice of law means an activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. "To engage in the practice of law is to perform those acts which are characteristics of the profession. Generally, to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill"

Note: The *Cayetano* case emphasizes that the practice of law is not limited to appearing in court. The practice is an activity enumerated above.

#### People vs. Villanueva

Practice of law to fall within the prohibition of the statute has been interpreted as customarily or habitually holding one's self out to the public as a lawyer and demanding payment for such services.

Note: *Villanueva* emphasizes on the habituality of practice

#### ULEP vs. Legal Clinic

The practice of law is not limited to the conduct of cases in court. It includes legal advice and counsel, and the preparation of legal instruments and contract by which legal rights are secured, although such matter may or may not be pending in court.

#### Lingan vs. Calubaquib and Baliga

This Court has the exclusive jurisdiction to regulate the practice of law. When this Court orders a lawyer suspended from the practice of law, the lawyer must desist from performing all functions requiring the application of legal knowledge within the period of suspension. This includes desisting from holding a position in the government requiring the authority to practice law.

Note: *Lingan* emphasizes on the desistance of the lawyer to hold a governmental office that requires the authority to practice law once he is suspended.

#### Practice of Law: A Privilege

Practice of law is a privilege but in some way (or some degree) a right because it cannot be removed or revoked whimsically or capriciously without due process of law and just cause.

#### It is a Privilege — Practice of Law

#### Overgaard vs. Valdez

We must emphasize that the right to practice law is not a natural or Constitutional right but is in the nature of a privilege or franchise, and it may be extended or

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withheld by this Court in the exercise of its sound discretion.

### **In re: Edillon**

But we must here emphasize that the practice of law is not a property right but a mere privilege, and as such must bow to the inherent regulatory power of the Court to exact compliance with the lawyer's public responsibilities.

### **Ramos vs. Mandagan**

The practice of law is considered a privilege bestowed by the State on those who show that they possess and continue to possess the legal qualifications for the profession. As such, lawyers are expected to maintain at all times a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to the society, the legal profession, the courts, and their clients, in accordance with the values and norms embodied in the Code.

Note: *Ramos* emphasizes on the five proficiency standards and the four-fold duties of a lawyer as a lawyer.

### **Office of the Court Administrator vs. Yu**

Once again, we express our disdain for judges and attorneys who underseverely think too highly of themselves, their personal and professional qualifications and qualities at the expense of the nobility of the Law Profession. It is well to remind the respondent that membership in the Law Profession is not like that in any ordinary trade. The Law is a noble calling, and only the individuals who are competent and fit according to the canons and standards set by this Court, the law and the *Rules of Court* may be bestowed the privilege to practice it.

Note: OCA emphasizes that only the individuals who are competent and fit according to the canons and standards set by this Court may be bestowed the privilege to practice it.

### **It is "In Some Way a Right" — Practice of Law**

#### **Pineda (Legal and Judicial Ethics, 3rd ed.)**

Lawyers cannot also be deprived of their license to practice law without due process. In this sense, the privilege to practice law is also a right by itself. But just like any other rights, it is subject to limitations.

#### **Schware vs. Board of Examiners**

A State cannot exclude a person from the practice of law or from any other occupation in the manner of for reasons that contravene the Due Process Clause (of the Fourteenth Amendment.) (Pp. 353 U.S. 238-239)

#### **Ex parte Garland, 71 US 4 Wall. 333 333 (1866)**

The right of an attorney and counselor, acquired by his admission, to appear for suitors to argue causes, is not a mere indulgence — a matter of grace and favor — revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgement of the court, for moral or professional delinquency.

#### **Wilner vs. Committee on Character and Fitness**

A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause (of the Fourteenth amendment).

We are not here concerned with the grounds which justify denial of a license to practice law, but only with what procedural due process requires if the license to be withheld. This is the problem which Chief Justice Taft adverted to in *Goldsmit vs. Board of Tax Appeals* involving an application of a certified public accountant to practice before the Board of Tax Appeals. Chief Justice Taft writing for the Court said:

We have examined in recent years that procedural due process often requires confrontation and cross examination of those whose words deprives a person of his livelihood.

That view has been taken by several state courts when it comes to procedural due process and the admission to practice law.

#### **Marcos vs. Chief of Staff**

American Jurisprudence says:

Sec. 99. Representation by Counsel. — It is the general rule that once accused of the crime has the right to be represented before the court by counsel, and this is expressly so declared by the statutes controlling the procedure in court-martial.

It has been held that a constitutional provision extending that right to one accused in any trial in any court whatever applies to a court-martial gives the accused the undeniable right to defend by counsel, and that a court-martial has no power to refuse an attorney the right to appear before it if he is properly licensed to practice in the courts of the state.

#### **Noriega vs. Sison**

The importance of the dual aspects of the legal profession has been wisely put by Chief Justice Marshall of the United States when he said:

On one hand, the profession of an attorney is of great importance to an individual and the prosperity of his life may depend on its exercise. The right to exercise it ought not to be lightly or capriciously taken from him.

On the other hand, it is extremely desirable that the respectability if the Bar should be maintained and that its harmony with the bench should be preserved. For these objects, some controlling power, some discretion ought to be exercised with great moderation and judgement, but it must be exercised.

#### **Tajan vs. Cusi**

We entertain no doubt that a court has jurisdiction without any formal complaint or petition, upon its own motion, to strike the name of an attorney from the roll in a proper case, provided he has had legal reasonable notice, and been afforded an opportunity to be heard in his defense.

#### **Rules of Court**

Rule 138 of the Rules of Court

Section 30. Attorney to be heard before removal or suspension. — No attorney shall be removed or suspended from the practice of his profession, until

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he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel. But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter *ex parte*.

Procedural due process requires that no attorney may be "removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel."

### Practice of Law is a Profession: Not a Trade or Business

#### Director of Religious Affairs vs. Bayot

Law is a profession and not a trade. The lawyer degrades himself and his profession who stoops to and adopts the practices of mercantilism by advertising his services or offering them to the public. As a member of the bar, he defiles the temple of justice with mercenary activities as the money-changer of the old defiled the temple of Jehovah.

#### Mayer vs. State of Bar

Its basic ideal is to render public service and to secure justice for those who seek its aid.

#### Linsangan vs. Tolentino

Time and time again, lawyers are reminded that the practice of law is a profession and not a business; lawyers should not advertise their talents as merchants advertise their wares. To allow a lawyer to advertise his talent or skill is to commercialize the practice of law, degrade the profession in the public's estimation and impair its ability to efficiently render that high character of service to which every member of the bar is called.

#### In a Matter of Petition for Authority to Continue Use of Law Firm Name (92 SCRA 1)

Primary characteristics which distinguish the legal profession from business are:

1. A duty of public service, of which the emoluments is a by product, and in which one may attain the highest eminence without making much money.
2. A relation as an "officer of court" to the administration of justice involving thorough sincerity, integrity, and reliability.
3. A fiduciary relationship with clients to the highest degree.
4. A relation to colleagues at the bar characterized by candor, fairness, and unwillingness to resort to current business methods of advertising and encroachment on their practice, or dealing directly with clients.

### Pointers

#### 1. Who can practice law according to the Rules of Court?

According to Sec. 1, Rule 138 of the Rules of Court, the requisites to practice law are:

1. One who is admitted to the bar
2. One who is admitted according to the provisions of the Rules of the Court
3. Good and regular standing

#### 2. Degree of proficiency required of a lawyer according to the case discussed

In the case of *Ramos vs. Mandagan*, lawyers are expected to maintain at all times a high standard of legal proficiency, morality, honesty, integrity and fair dealing.

#### 3. Four-fold duties of a lawyer

In the case of *Ramos vs. Mandagan* the four-fold duties embodied in the Code of Professional Responsibility are:

1. Duty to the society
2. Duty to the legal profession
3. Duty to the courts
4. Duty to their clients

#### 4. Is the practice of law a privilege or a right?

Practice of law is a privilege but in some way (or some degree) a right because it cannot be removed or revoked whimsically or capriciously without due process of law and just cause.

It is a privilege, as explained in *Overgaard vs. Valdez*, because the right to practice law is not a natural or Constitutional right but is in the nature of a privilege or franchise, and it may be extended or withheld by the Supreme Court in the exercise of its sound discretion.

It is in some degree a right because lawyers cannot also be deprived of their license to practice law without due process. In this sense, the privilege to practice law is also a right by itself. But just like any other rights, it is subject to limitations (*Pineda, Legal and Judicial Ethics*, 3rd ed.)

#### 5. The practice of law, to fall within the prohibition of the statute, has been interpreted as:

In *People vs. Villanueva*, to fall within the prohibition of the statute, has been interpreted as:

1. Customarily or habitually holding one's self out to the public as a lawyer and
2. Demanding payment for such services.

#### 6. Write from memory the Lawyer's Oath

#### 7. Memorize the practice of law according to Black's Dictionary

## II. QUALIFICATIONS OF THE PRACTICE OF LAW

### Qualifications According to the Provisions of the Rules of Court

### Requirements For All Applicants For Admission To The Bar

Every applicant for admission as a member of the bar must be a citizen of the Philippines, at least twenty-one years of age, of good moral character, and resident of the Philippines; and must produce before the Supreme Court satisfactory evidence of good moral character, and that no charges against him, involving moral

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turpitude, have been filed or are pending in any court in the Philippines. (Sec. 2)

### Additional Requirements For Other Applicants

All applicants for admission other than those referred to in the two preceding sections, shall before being admitted to the examination, satisfactorily show that they have successfully completed all the prescribed courses for the degree of Bachelor of Laws or its equivalent degree, in a law school or university officially recognized by the Philippine Government or by the proper authority in the foreign jurisdiction where the degree has been granted.

No applicant who obtained the Bachelor of Laws degree in this jurisdiction shall be admitted to the bar examination unless he or she has satisfactorily completed the following course in a law school or university duly recognized by the government: civil law, commercial law, remedial law, criminal law, public and private international law, political law, labor and social legislation medical jurisprudence, taxation, legal ethics and clinical legal education program.

A Filipino citizen who graduated from a foreign law school shall be admitted to the bar examination only upon submission to the Supreme Court of certifications showing: (a) completion of all courses leading to the degree of Bachelor of Laws or its equivalent degree; (b) recognition or accreditation of the law school by the proper authority; and (c) completion of all the fourth year subjects in the Bachelor of Laws academic program in a law school duly recognized by the Philippine Government. (Sec. 5, As amended by B.M. No. 1153, March 09, 2010)

### Pre-Law

No applicant for admission to the bar examination shall be admitted unless he presents a certificate that he has satisfied the Secretary of Education that, before he began the study of law, he had pursued and satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, the course of study prescribed therein for a bachelor's degree in arts or sciences with any of the following subjects as major or field of concentration: political science, logic, english, spanish, history and economics. (Sec. 6)

### Passing Average

In order that a candidate may be deemed to have passed his examinations successfully, he must have obtained a general average of 75 per cent in all subjects, without falling below 50 per cent in any subjects. In determining the average, the subjects in the examination shall be given the following relative weights: Civil Law, 15 per cent; Labor and Social Legislation, 10 per cent; Mercantile Law, 15 per cent; Criminal Law, 10 per cent; Political and International Law, 15 per cent; Taxation, 10 per cent; Remedial Law, 20 per cent; Legal Ethics and Practical Exercises, 5 per cent. (Sec. 14)

### Admission and Oath of Successful Applicants

An applicant who has passed the required examination, or has been otherwise found to be entitled to admission to the bar, shall take and subscribe before the Supreme Court the corresponding oath of office. (Sec. 17)

### Certificate

The supreme Court shall thereupon admit the applicant as a member of the bar for all the courts of the Philippines, and shall direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the clerk of court, which certificate shall be his authority to practice. (Sec. 18)

### Attorney's Roll

The clerk of the Supreme Court shall kept a roll of all attorneys admitted to practice, which roll shall be signed by the person admitted when he receives his certificate. (Sec. 19)

### Ulep vs. Legal Clinic (Qualifications)

It is apt to recall that only natural persons can engage in the practice of law, and such limitation cannot be evaded by a corporation employing competent lawyers to practice for it. Obviously, this is the scheme or device by which respondent "The Legal Clinic, Inc." holds out itself to the public and solicits employment of its legal services. It is an odious vehicle for deception, especially so when the public cannot ventilate any grievance for malpractice against the business conduit.

Precisely, the limitation of practice of law to persons who have been duly admitted as members of the Bar (Sec. 1, Rule 138, Revised Rules of Court) is to subject the members to the discipline of the Supreme Court. Although respondent uses its business name, the persons and the lawyers who act for it are subject to court discipline.

The practice of law is not a profession open to all who wish to engage in it nor can it be assigned to another. It is a personal right limited to persons who have qualified themselves under the law. It follows that not only respondent but also all the persons who are acting for respondent are the persons engaged in unethical law practice.

### In Re: Dacanay, B.M. No. 1678 (Qualifications)

Quoting In Re Bosque, the Supreme Court said: "In other words, the loss of Filipino citizenship ipso jure terminates the privilege to practice law in the Philippines. The practice of law is a privilege denied to foreigners

The exception is when Filipino citizenship is lost by reason of naturalization as a citizen of another country but subsequently reacquired pursuant to RA 9225. This is because all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of RA 9225. Therefore, a Filipino lawyer who becomes a citizen of another country is deemed never to have lost his Philippine citizenship if he reacquires it in accordance with RA 9225. Although he is also deemed never to have terminated his membership in the Philippine bar, no automatic right to resume law practice accrues.

Under RA 9225, if a person intends to practice the legal profession in the Philippines and he reacquires his Filipino citizenship pursuant to its provisions "(he) shall apply with the proper authority for a license or permit to engage in such practice." Stated otherwise, before a

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lawyer who reacquires Filipino citizenship pursuant to RA 9225 can resume his law practice, he must first secure from this Court the authority to do so, conditioned on:

- a) the updating and payment in full of the annual membership dues in the IBP;
- b) the payment of professional tax;
- c) the completion of at least 36 credit hours of mandatory continuing legal education (MCLE); this is specially significant to refresh the applicant/petitioner's knowledge of Philippine laws and update him of legal developments and
- d) the retaking of the lawyer's oath which will not only remind him of his duties and responsibilities as a lawyer and as an officer of the Court, but also renew his pledge to maintain allegiance to the Republic of the Philippines.

### **In Re: Petition to Take the Lawyer's Oath, Bar Matter No. 1209 (Qualifications)**

This is the case of Atty. Cesar Distrito. He was allowed to conditionally take the Bar pending resolution of his usurpation case.

The case stemmed from his presiding over as President of the SK Federation in Bacolod City even though he was not the president.

After he passed the bar, a certain Montinola filed a complaint against him for non disclosure of criminal (BP 22) and two civil cases (collection of sums of money).

In his contention:

- He thought that only pending cases are to be disclosed.
- The BP 22 case did not even reach arraignment.
- The civil cases were already dismissed at the same time of his application to take the Bar.
- He thought all bar passers could use "Atty." and only the practice of law was prohibited to those who had not taken the lawyer's oath yet and signed the rolls of attorneys.

The petitioner's contention is quite hard to accept. In the ready-made petition dorm to make the Bar Examination, the following is written clearly:

"Note: Indicate any pending or dismissed civil, criminal or administrative case against you and attach pertinent documents: \_\_\_\_\_."

If petitioner had not read the notation, as what he claimed, why did he disclose his pending case for Usurpation of authority or Official Function. Moreover, the said instruction is written in the middle of the form, so if petitioner had not really read the same, he was not mindful of what he was doing which should not be the case of a Bar applicant.

Section 2 of Rule 138 of the Revised Rules of Court enumerates the requirements for all applicants for admission to the bar, to wit:

Every applicant for admission as a member of the bar must be a citizen of the Philippines, at least twenty-one years of age, of good moral character, and a resident of the Philippines; and must produce before the Supreme Court satisfactory evidence of good moral character,

and that no charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines. x x x

As to the IBP incident, the petitioner claims that he though the occasion was just a plain and simple testimonial dinner for successful bar examinees that included an awarding ceremony for judges. It was only later when he discovered that the program was actually a testimonial for new lawyers. However, a perusal of the invitation sent by the IBP to the petitioner reveals that there was an express mention that the affair was for new lawyers, to wit:

Dear Atty. Distrito:

The IBP-Negros Occidental Chapter will hold its Chapter's Judicial Award of Excellence to Outstanding Judges and Prosecutors and Testimonial Dinner for new lawyers on June 28, 2002, 7:00 P.M., at the Ballroom-A, Business Inn, Lacson Street, Bacolod City.

In behalf of the Officers and members of the IBP-Negros Occidental Chapter, I am inviting you to attend said after being one of the new members of the Bar. Please come in formal attire.

Your presence on this occasion will be highly appreciated.

### **Use of the Title "Attorney" (Bar Matter No. 1209)**

The Oath is thus a prerequisite to the admission to the practice of law, while the signing in the Roll is the last act that finally signifies membership in the bar, giving the applicant the right to call himself "attorney". Continued membership in the IBP and regular payment of membership dues and other lawful assessments that it may levy are conditions sine qua non to the privilege to practice law and to the retention of his name in the Roll of Attorneys.

The unauthorized use of the said appellation may render a person liable for indirect contempt of court. The Court may deny the applicant's petition to take the Lawyer's Oath for grave misconduct, such as calling himself and "attorney" and appearing as counsel for clients in courts even before being admitted to the bar. Although the evidence in this case does not include that the petitioner actually engaged in the practice of law, the fact is that he signed in an attendance sheet as "Atty. Caesar Distrito." He called himself "attorney" knowing fully well that he was not yet admitted to the bar. (*In Re: Petition to Take the Lawyer's Oath, supra*)

### **Common Honesty in Good Moral Character (Bar Matter No. 1209)**

It has been held that moral character is what a person really is, as distinguished from good reputation or from the opinion generally entertained of him, the estimate in which he is held by the public in the place where he is known. Moral character is not a subjective term but one which corresponds to objective reality. The standard of personal and professional integrity is not satisfied by such conduct as it merely enables a person to escape the penalty of criminal law. Good moral character includes at least common honesty.

### **Concealment; Not Moral turpitude (Bar Matter No. 1209)**

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It has also been held that an applicant for admission to the bar who made a false statement in his application is not of good moral character. The concealment or withholding from the court of the fact that an applicant has been charged with or indicated for an alleged crime is a ground for disqualification of the applicant to take the bar examination, or for revocation of the license to practice, if he has already been admitted to the bar. If what the applicant concealed is a crime which does not involve moral turpitude, it is the fact of concealment and not the commission of the crime itself that makes him morally unfit to become a lawyer. It should be noted that the application was made under oath, which he lightly took when he made the concealment.

### Black's Dictionary; Moral Turpitude, Definition

An act of baseness, vileness or depravity in private and social duties which man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. xxx Act or behavior that gravely violates moral sentiment or accepted culpable quality held to be present in some criminal offenses as distinguished from others. xxx The quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory mala prohibita. (*Justice Brion's Concurring Opinion, Teves vs. Comelec, G.R. No. 180363, April 28, 2009*)

### In Re: Basa (Moral Turpitude)

In a case which involved a lawyer having committed abduction with consent, the Supreme Court of the Philippines through Justice Malcolm said:

"Moral turpitude," it has been said, "includes everything which is done contrary to justice, honesty, modesty, or good morals." (Bouvier's Law Dictionary, cited by numerous courts.) Although no decision can be found which has decided the exact question, it cannot admit of doubt that crimes of this character involve moral turpitude. The inherent nature of the act is such that it is against good morals and the accepted rule of right conduct.

### Teves vs. Comelec (Moral Turpitude)

#### Crimes Involving Moral Turpitude

The following is a list, not necessarily complete, of the crimes adjudged to involve moral turpitude:

1. Abduction with consent
2. Seduction under promise of marriage
3. Bigamy
4. Concubinage
5. Adultery
6. Smuggling
7. Rape
8. Estafa through falsification of a document
9. Attempted Bribery
10. Profiteering
11. Robbery
12. Murder, whether consummated or attempted
13. Estafa
14. Theft

15. Blackmail
16. Illicit Sexual Relations with a Fellow Worker
17. Violation of BP Bldg. 22
18. Falsification of Document
19. Mutilation of Public Record
20. Fabrication of Evidence
21. Making fraudulent proof of loss on insurance contract
22. Offenses against pension laws
23. Evasion of income tax
24. Intriguing against Honor
25. Violation of the Anti-Fencing Law
26. Violation of Dangerous Drugs Act of 1972 (Drug-pushing)
27. Perjury
28. Criminal Conspiracy to Smuggle Opium
29. Forgery
30. Libel
31. Direct Bribery
32. Frustrated Homicide
33. Arson
34. Barratry
35. Dueling
36. Embezzlement

#### Not Considered as Moral Turpitude

The Court, on the other hand, has also had the occasion to categorically rule that certain crimes do not involve moral turpitude, namely:

1. Minor transgressions of the law (i.e., conviction for speeding)
2. Illegal recruitment
3. Slight physical injuries
4. Carrying of deadly weapon (Illegal possession of firearms)
5. Indirect Contempt

In People v. Yambot, the Court categorically ruled that the possession of a deadly weapon does not involve moral turpitude since the act of carrying a weapon by itself is not inherently wrong in the absence of a law punishing it.

Likewise, the Court acknowledged in Court Administrator v. San Andres that illegal recruitment does not involve moral turpitude since it is not in itself an evil act – being ordinarily an act in the ordinary course of business – in the absence of a law prohibiting it.

In the case of People v. Tuanda, the Court held that "violation of B.P. Blg. 22 is a serious criminal offense which deleteriously affects public interest and public order," and considered the same offense involving moral turpitude. The erring lawyer was consequently suspended from the practice of law.

#### Approaches in Determining Moral Turpitude (Teves vs. Comelec, supra)

##### First Approach (Objective Approach) —

The objective perspective of the act itself.

The Court saw the involvement of moral turpitude where an act is intrinsically immoral, regardless of whether it is punishable by law or not. The Court emphasized that moral turpitude goes beyond being merely mala prohibita; the act itself must be inherently immoral. Thus, this approach requires

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that the committed act itself be examined, divorced from its characterization as a crime.

### Second Approach —

The perspective from the crime itself

The second approach is to look at the act committed through its elements as a crime. The Court recognized that as a "general rule, all crimes of which fraud is an element are looked on as involving moral turpitude." This is the same conclusion that the U.S. Supreme Court made in Jordan, i.e., that crimes requiring fraud or intent to defraud always involve moral turpitude.

### Third Approach (Subjective Approach) —

The subjective perspective that takes into account the perpetrator's level of depravity when he committed the crime.

The third approach, the subjective approach, essentially takes the offender and his acts into account in light of the attendant circumstances of the crime: was he motivated by ill will indicating depravity?

### Common Question in the Three Approaches

For the three approaches, the defining question is:

Is it contrary to the accepted rules of right and duty, justice, honesty, and good morals?

To be able to be cleared and ruled out of the definition of "moral turpitude", all three must be answered in the negative.

### In Re Gutierrez, 5 SCRA 661 (Moral Turpitude)

The term "moral turpitude" includes everything which is done contrary to justice, honesty, modesty or good morals. As used in disbarment statutes, it means an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted rule of right and duty between man and man.

### De Jesus-Paras vs. Vailoces (Moral Turpitude)

This involves the last will and testament of one Tarcela Visitacion de Jesus, notarized by Atty. Quinciano Vailoces.

He was convicted of Falsification of Public Document under Art. 171 of the RPC for forging the signature of de Jesus.

Indeed, it is well-settled that "embezzlement, forgery, robbery, swindling are crimes, which denote moral turpitude and, as a general rule, all crimes of which fraud is an element are looked on as involving moral turpitude.

Among the examples given of crimes of this nature by former Chief Justice Moran are the crime of seduction and the crime of concubinage.

### Rules of Court: Important Points

## Section 5-6

*"Must have satisfactorily complied with the additional legal requirements"*

1. Regularly studied law for four years, and successfully completed all prescribed courses, in a school or university officially approved by the Secretary of Education (now under LEB)
2. Completed the following course in a law school or university duly recognized by the government: civil law, commercial law, remedial law, criminal law, public and private international law, political law, labor and social legislation medical jurisprudence, taxation, legal ethics and clinical legal education program.
3. Before he began the study of law, he had pursued and satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, the course of study prescribed therein for a bachelor's degree in arts or sciences with any of the following subjects as major or field of concentration: political science, logic, english, spanish, history and economics.

## Section 14

*Pass the Bar Examination*

- General average of 75% in all subjects
- The policy disqualifying the examinees with grades below 50% was abolished in the year 2010.
- The "five-strike" rule was implemented in 2005 (Bar Matter No. 1161). Under this system, bar examinees who fail to pass the bar five times will be disqualified from further taking the examinations. However, this was lifted in 2014, applicable right away to the 2014 bar examinations.
- In the 2019 Bar Exams, two examiners shall handle each subject. Thus, for the eight bar subjects, there were 16 examiners.
  - a. One examiner to focus on the past Bar questions and leading jurisprudence
  - b. And the other, to concentrate on the basic principles and controlling doctrines.

## Section 17

*"take and subscribe before the Supreme Court the corresponding oath of office"*

The Court may deny the applicant's petition to take the Lawyer's Oath for grave misconduct, such as calling himself and "attorney" and appearing as counsel for clients in courts even before being admitted to the bar. Although the evidence in this case does not include that the petitioner actually engaged in the practice of law, the fact is that he signed in an attendance sheet as "Atty. Caesar Distrito." He called himself "attorney" knowing fully well that he was not yet admitted to the bar. (Bar Matter 1209, *supra*)

## Section 18-19

*Sign the Roll of Attorneys*

The Oath is thus a prerequisite to admission to the practice of law, while the signing in the Roll is the last act that finally signifies membership in the bar, giving the applicant the right to call himself "attorney". Continued membership in the IBP and regular payment of

## BASIC LEGAL ETHICS NOTES

membership dues and other lawful assessments that it may levy are conditions sine qua non to the privilege to practice law and to the retention of his name in the Roll of Attorneys. (Bar Matter 1209, *supra*)

### Pointers

#### 1. What are the qualifications to practice law?

According to Rule 138 of the Rules of Court, in order to be qualified to practice law, a person must:

- a. Citizen of the Philippines (Sec. 2)
- b. Resident of the Philippines (Sec. 2)
- c. Of good moral character (Sec. 2)
- d. At least 21 years old (Sec. 2)
- e. Must produce before the Supreme Court a satisfactory evidence of good moral character
- f. No charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines (Sec. 2)
- g. Must have satisfactorily complied with the additional legal requirements (Sec. 5-6)
- h. Pass the Bar examination (Sec. 14)
- i. Take and subscribe before the Supreme Court the corresponding oath of office (Sec. 17)
- j. Sign the roll of attorneys (Sec. 18 and 19)

#### 2. Ulep vs Legal Clinic

“A personal right limited to qualified persons”

- The practice of law is not a profession open to all who wishes to engage in it nor can it be assigned to another
- It is a personal right limited to persons who have qualified themselves under the law.

#### 3. In Re: Dacanay

Under RA 9225, when a person reacquires his Philippine citizenship, these are the conditions that person must do in order to practice law again:

(Keywords — COUP)

1. Credit units of MCLE = 36 units
2. Oath: Retake the lawyer's oath
3. Upgrade: He must pay the IBP fee not only for that year, but upgrade the payment of arrears
4. Professional tax payments for the current year

#### 4. B.M. No. 1153, March 09, 2010 (Amended Section 5 of Rule 138)

A Filipino citizen who graduated from a foreign law school shall be admitted to the bar examination only upon submission to the Supreme Court of certifications showing:

- Completion of all courses leading to the degree of Bachelor of Laws or its equivalent degree;
- Recognition or accreditation of the law school by the proper authority; and
- Completion of all the fourth year subjects in the Bachelor of Laws academic program in a law school duly recognized by the Philippine Government.
- A Filipino citizen who completed his or her degree in Bachelor of Laws or its equivalent in a foreign law school must also present a completion of a separate bachelor's degree.

(Keyword — SAFE)

- (Completion of) a separate bachelor's degree
- Accreditation of law school by proper authority
- Fourth year subjects in the Bachelor of Laws academic program in a law school duly accredited by the Philippine Government
- Equivalent degree to Bachelor of Laws, or the completion of all courses leading to Bachelor of Laws

#### 5. Teves vs. Comelec; Moral Turpitude

Keyword — MORAL TURPITUDES

M — Mutilation of Public Documents  
O — Offenses Against Pension Laws  
R — Rape  
A — Abduction with Consent, Arson, Adultery  
L — Libel  
T — Theft  
U — Violation of Dangerous Drugs Act  
R — Robbery  
P — Perjury  
I — Intriguing Against Honor  
T — Tax Evasion  
U — Violation of BP 22  
D — Direct Bribery  
E — Estafa, Embezzlement  
S — Seduction Under Promise of Marriage

#### 7. What is the defining question in determining whether or not an act involves moral turpitude?

It is contrary to the accepted rules of:

- a. Rules of right and duty
- b. Justice
- c. Honesty
- d. Good morals

#### 8. Three Approaches in Determining Moral Turpitude

For an act to be excluded from the definition of moral turpitude, what are the three approaches should be answered in the negative?

1. Objective approach: The act should not be bad (or evil) in itself (*mala in se*)
2. Subjective approach: The person doing the act should not be motivated by ill will indicating moral depravity
3. The elements of the crime should not include fraud

## III. CONTINUING REQUIREMENTS

### Continuing Requirements

- a. Membership at the IBP
- b. Payment of IBP dues
- c. Good and regular standing
- d. Requirement of good moral character
- e. Compliance with MCLE

### Membership at the IBP

#### In Re: IBP (Integration of the Bar of the Philippines)

Integration of the Philippine Bar means the official unification of the entire lawyer population of the Philippines. This requires membership and financial

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support (in reasonable amount) of every attorney as conditions sine qua non to the practice of law and the retention of his name in the Rolls of Attorneys of the Supreme Court

The term "bar" refers to the collectivity of all persons whose names appear in the Roll of Attorneys. An Integrated Bar (or Unified Bar) performance must include all lawyers.

Integration does not make a lawyer a member of any group of which he is not already a member. He became a member of the Bar when he passed the Bar examinations. All that integration actually does is to provide an official national organization for the well-defined but unorganized and incohesive group of which every lawyer is already a member.

### **Section 9, Rule 139-A, Rules of Court (Membership at the IBP)**

**Section 9. Membership dues.** — Every member of the Integrated Bar shall pay such annual dues as the Board of Governors shall determine with the approval of the Supreme Court. A fixed sum equivalent to ten percent (10%) of the collection from each Chapter shall be set aside as welfare fund for disabled members of the Chapter and the compulsory heirs of deceased members thereof.

### **Payment of Privilege or Occupation Tax (Membership at the IBP)**

A professional tax, or occupational tax, is a tax charged on any one who is practicing a profession such as an accountant, lawyer, doctor or engineer. It is a tax which a professional must pay in order to be given the privilege to practice a professional service.

Section 139 of the Local Government Code provides:

**Professional Tax** – (a) The province may levy an annual professional tax on each person engaged in the exercise or practice of his profession requiring government examination at such amount and reasonable classification as the sangguniang panlalawigan may determine but shall in no case exceed Three hundred pesos (P300.00).

(b) Every person legally authorized to practice his profession shall pay the professional tax to the province where he practices his profession or where he maintains his principal office in case he practices his profession in several places: Provided, however, That such person who has paid the corresponding professional tax shall be entitled to practice his profession in any part of the Philippines without being subjected to any other national or local tax, license, or fee for the practice of such profession.

By express provision, a professional may practice his profession anywhere in the Philippines provided he pays an annual tax not exceeding P300. Payment of professional tax must be done annually on or before the 31st day of January.

Any professional who intends to pay his professional tax must present his latest Official Receipt and/or Government License ID before the local government accepts payment.

### **Requirement of Good Moral Character**

#### **Valdez vs. Dabon Jr.**

Lawyers have been repeatedly reminded by the Court that possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession. This proceeds from the lawyer's bounden duty to observe the highest degree of morality in order to safeguard the Bar's integrity, and the legal profession exacts from its members nothing less. Lawyers are called upon to safeguard the integrity of the Bar, free from misdeeds and acts constitutive of malpractice. Their exalted positions as officers of the court demand no less than the highest degree of morality.

Morality in our liberal society today is probably a far cry from what it used to be. Notwithstanding this permissiveness, lawyers, as keepers of the public faith, are burdened with a high degree of social responsibility and, hence, must handle their personal affairs with greater caution. Indeed, those who have taken the oath to assist in the dispensation of justice should be more possessed of the consciousness and the will to overcome the weakness of the flesh.

### **Ortigas Plaza Development Co. vs. Tumulak**

The sworn obligation of every lawyer under the *Lawyer's Oath* and the *Code of Professional Responsibility* to respect the law and the legal processes is a continuing condition for retaining membership in the Legal Profession. The lawyer must act and comport himself in such a manner that would promote public confidence in the integrity of the Legal Profession.

Members of the Bar are reminded, therefore, that their first duty is to comply with the rules of procedure, rather than to seek exceptions as loopholes. A lawyer who assists a client in a dishonest scheme or who connives an act that warrants disciplinary actions against him or her.

### **Compliance with MCLE**

#### **Bar Matter 850 August 22, 2000**

##### **• Rule 1 — Purpose**

##### **Section 1. Purpose of the MCLE**

Continuing legal education is required of members of the Integrated Bar of the Philippines (IBP) to ensure that throughout their career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law.

##### **• Rule 2 — Mandatory Continuing Legal Education**

##### **Section 1. Constitution of the MCLE Committee**

Within two (2) months from the approval of these Rules by the Supreme Court En Banc, the MCLE Committee shall be constituted in accordance with these Rules.

##### **Section 2. Requirements of completion of MCLE**

Members of the IBP not exempt under Rule 7 shall complete, every three (3) years, at least thirty-six (36)

## BASIC LEGAL ETHICS NOTES

hours of continuing legal education activities approved by the MCLE Committee. Of the 36 hours:

- (a) At least six (6) hours shall be devoted to legal ethics.
- (b) At least (4) hours shall be devoted to trial and pretrial skills.
- (c) At least five (5) hours shall be devoted to alternative dispute resolution.
- (d) At least nine (9) hours shall be devoted to updates on substantive and procedural laws, and jurisprudence.
- (e) At least four (4) hours shall be devoted to legal writing and oral advocacy.
- (f) At least two (2) hours shall be devoted to international law and international conventions.
- (g) The remaining six (6) hours shall be devoted to such subjects as may be prescribed by the MCLE Committee.

**Note:** All lawyers are mandated to complete every three (3) years at least thirty-six (36) hours of continuing legal education activities as provided by the Mandatory Continuing Legal Education (MCLE) Committee of the Supreme Court. MCLE is required for all members of the Integrated Bar of the Philippines (IBP) to ensure that throughout their career, they keep abreast with the law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law. (Section 1, Rule 1, Bar Matter 850)

### • Rule 7 — Exemptions

#### Section 1. Parties exempted from the MCLE

The following members of the Bar are exempt from the MCLE requirement:

- (a) The President and the Vice President of the Philippines, and the Secretaries and Undersecretaries of Executives Departments;
- (b) Senators and Members of the House of Representatives;
- (c) The Chief Justice and Associate Justices of the Supreme Court, incumbent and retired members of the judiciary, incumbent members of the Judicial and Bar Council and incumbent court lawyers covered by the Philippine Judicial Academy program of continuing judicial education;
- (d) The Chief State Counsel, Chief State Prosecutor and Assistant Secretaries of the Department of Justice;
- (e) The Solicitor General and the Assistant Solicitor General;
- (f) The Government Corporate Counsel, Deputy and Assistant Government Corporate Counsel;
- (g) The Chairmen and Members of the Constitutional Commissions;
- (h) The Ombudsman, the Overall Deputy Ombudsman, the Deputy Ombudsmen and the Special Prosecutor of the Office of the Ombudsman;
- (i) Heads of government agencies exercising quasi-judicial functions;
- (j) Incumbent deans, bar reviews and professors of law who have teaching experience for at least 10 years accredited law schools;
- (k) The Chancellor, Vice-Chancellor and members of the Corps of Professors and Professorial

Lectures of the Philippine Judicial Academy; and

- (l) Governors and Mayors.

#### Section 2. Other parties exempted from the MCLE

The following Members of the Bar are likewise exempt:

- (a) Those who are not in law practice, private or public.
- (b) Those who have retired from law practice with the approval of the IBP Board of Governors.

#### Section 3. Good cause for exemption from or modification of requirement

A member may file a verified request setting forth good cause for exemption (such as physical disability, illness, post graduate study abroad, proven expertise in law, etc.) from compliance with or modification of any of the requirements, including an extension of time for compliance, in accordance with a procedure to be established by the MCLE Committee.

#### People vs. Arrojado (Compliance with MCLE)

On point is the *People vs. Arrojado* where it was held that the failure of a lawyer to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance will no longer result in the dismissal of the case:

In any event, to avoid inordinate delays in the disposition of cases brought about by a counsel's failure to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance, this Court issued an En Bane Resolution, dated January 14, 2014 which amended B.M. No. 1922 by repealing the phrase "Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records" and replacing it with "Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action."

Thus, under the amendatory Resolution, the failure of a lawyer to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance will no longer result in the dismissal of the case and expunction of the pleadings from the records. Nonetheless, such failure will subject the lawyer to the prescribed fine and/or disciplinary action.

#### Doble Jr. vs. ABB Inc.

In *Doble Jr. vs. ABB Inc.*, the Court held that the Court of Appeals erred when it dismissed the Petition of Certiorari due to the failure of petitioner's counsel to provide information regarding his MCLE compliance.

## IV. APPEARANCE OF NON-LAWYERS

As a general rule, only those who are licensed to practice law can handle cases in court.

#### Exceptions

- a. Student Practice Rule

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- b. Representation on one's behalf
- c. Where non-lawyers are allowed in tribunals
- d. Where lawyers are prohibited from appearing
  - i. Katarungang Pambarangay
  - ii. Small claims cases

### Student Practice Rule

#### Rule 138-A, Rules of Court

- **Conditions for Student Practice**

A law student who has successfully completed his 3rd year of the regular four-year prescribed law curriculum and is enrolled in a recognized law school's clinical legal education program approved by the Supreme Court, may appear without compensation in any civil, criminal or administrative case before any trial court, tribunal, board or officer, to represent indigent clients accepted by the legal clinic of the law school. (Sec. 1)

- **Appearance**

The appearance of the law student authorized by this rule, shall be under the direct supervision and control of a member of the Integrated Bar of the Philippines duly accredited by the law school. Any pleadings, motions, briefs, memoranda or other papers to be filed, must be signed by the supervising attorney for and in behalf of the legal clinic. (Sec. 2)

- **Privileged Communication**

The Rules safeguarding privileged communications between attorney and client shall apply to similar communications made to or received by the law student, acting for the legal clinic. (Sec. 3)

- **Standards of Conduct and Supervision**

The law student shall comply with the standards of professional conduct governing members of the Bar. Failure of an attorney to provide adequate supervision of the student practice may be ground for disciplinary action. (Sec. 4; Circular No. 19, December 19, 1986)

#### Before the Inferior Courts, Bar Matter No. 730 (Student Practice Rule)

The Law Student Practice Rule is only an exception to the rule. Hence, the presiding judge should see to it that the law student appearing before the court is properly guided and supervised by a member of the bar.

The rule, however, is different if the law student appears before an inferior court, where the issues and procedures are relatively simple. In inferior courts, a law student may appear in his personal capacity without the supervision of a lawyer.

#### Non-Lawyers in Court (Student Practice Rule)

*To whom litigation is conducted* — In the court of a justice of the peace a party may conduct litigation in person, with the aid of an agent of friend appointed by him for the purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by the aid of an attorney, and his appearance must be

either personal or by a duly authorized member of the bar. (Sec. 34, Rule 138, Rules of Court)

#### In a Criminal Case Before the MTC (Student Practice Rule)

*Appointment of counsel de officio* — The court, considering the gravity of the offense and the difficulty of the questions that may arise, shall appoint as counsel de officio only in such members of the bar in good standing who, by reason of their experience and ability, can completely defend the accused. But in localities where such members of the bar are not available, the court may appoint any person, resident of the province and of good repute for probity and ability, to defend the accused. (Sec. 7, Rule 116 of the Rules of Court)

#### Non-Lawyers in Tribunals

##### Mnemonics: GNC

1. Before **NLRC**, or any labor arbiter if:
  - a. They represent themselves, or
  - b. They represent their org or members thereof (Art. 222, Labor Code)
2. Before the **Cadastral Court**, a non lawyer may represent a claimant (Sec. 9, Act No. 2259)
3. Any official or other person appointed or designated in accordance with the law **to appear for the government of the Philippines** or any of its officials (Sec. 33, Rule 138, Rules of Court)

#### Representation of One's Behalf: Not a Practice of Law

Is appearing on one's behalf considered as practice of law?

In *Santos vs. Judge Lacurom*, the Court recognized the party's right to self representation under Section 14, Rule 138 of the Rules of Court. The Court ruled:

The Rules recognize the right of an individual to represent himself in any case in which he is a party. The Rules state that he may conduct his litigation personally or by the aid of an attorney, and that his appearance must be either personal or by a duly authorized member of the Bar. The individual litigant may personally do everything in the progress of the action from commencement to termination of the litigation. A party's representation on his own behalf is not considered to be a practice of law as "one does not practice law by acting for himself, any more than he practices medicine by rendering first aid to himself."

#### Proceeding Where Lawyers are Prohibited from Appearing as Counsels

1. Before the Katarungang Pambarangay (Sec. 415, RA 7160)
2. In small claims cases unless the lawyer himself is the plaintiff or defendant

#### Before the Katarungang Pambarangay —

In all Katarungang Pambarangay proceedings, the parties must appear in person without the assistance of counsel or representative, except for minors and

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incompetents who may be assisted by their next-of-kin who are not lawyers. (Sec. 415, RA 7160)

### Small Claims Cases —

*Appearance of attorneys not allowed* — No attorney shall appear in behalf of or represent a party at the hearing, unless the attorney is not plaintiff or defendant.

If the Court determines that a party cannot properly present his/her claim or defense and needs assistance, the court may, in its discretion, allow another individual who is not an attorney to assist that party upon the latter's consent. (Sec. 19, A.M. No. 08-8-7-SC, 2016 Revised Rules for Small Claims Cases)

## V. SANCTIONS FOR PRACTICE OR APPEARANCE WITHOUT AUTHORITY

Lawyers without authority may be held for:

- a. Contempt of Court
- b. Administrative liability
- c. Suspension, disbarment and other form of discipline
- d. Criminal Liability

### Contempt of Court

Any person who practices law or who assumes to be an attorney is liable for contempt of court, punishable by fine or imprisonment or both in the discretion of the court. (Rule 71, Rules of Court)

### Philippine Association of Labor Unions vs. Binalagan Isabela Sugar Co. (Contempt of Court)

The reasons are that the ethics of the legal profession should not be violated; that acting as an attorney without authority constitutes contempt in court, which is punishable by fine or imprisonment or both, and the law will not assist a person to reap the fruits or benefit of an act done in violation of law; and that if were to be allowed to non-lawyers, it would the public in hopeless confusion as to whom to consult in case of necessity and also leave the bar in chaotic condition, aside from the fact that non-lawyers are not amenable to disciplinary measure.

### Ciocon-Reer vs. Judge Lubao (Contempt of Court)

Rembrento C. Karaan Sr. was found guilty of indirect contempt for unauthorized practice of law.

The Court ruled that under section 3(e), Rule 71 of the 1997 Rules of Civil Procedure, a person "assuming to be an attorney or an officer of a court, and acting as such without authority", is liable for indirect contempt of court. The penalty for indirect contempt committed against a Regional Trial court or a court of equivalent or higher rank is a fine not exceeding P30,000 or imprisonment not exceeding six months, or both. The penalty for indirect contempt committed against a lower court is a fine not exceeding P5,000 or imprisonment not exceeding one month, or both

The Office of the Court Administrator (OCA) recommended that Karaan be cited for indirect contempt and be sentenced to serve an imprisonment of ten days at the Manila City jail, and to pay a fine of P1,000. The Court, however, considered that at that time, Karaan

was already 71 years old. Thus, in consideration of his old age and state of health, the Court deemed it proper to remove the penalty of imprisonment and to instead increase the recommended fine to P10,000.

As regards to the unauthorized practice of law, the Court already noted in its 20 June 2012 Resolution that Karaan had a modus operandi of offering free paralegal advice and making the parties execute a special power of attorney that would make him an agent of the litigants that would allow him to file suits, pleadings, and motions with himself as one of the plaintiffs acting on behalf of his "clients." This circumstance does not appear to be present in this case. The report states that in Civil Case No. 2022-99, Karaan is the only plaintiff. He does not appear to be acting on behalf of anyone. Karaan signed the Pre-Trial Brief and the Ex-Parte Urgent Omnibus Motions, Manifestations, Oppositions, and Objections, among others, as a plaintiff and on his own behalf.

### Administrative Liability

An officer or employee of the civil service who, as a lawyer engages in the private practice of law without a written permit from the department head concerned may be held administratively liable therefore. (Noriega vs. Sison, 125 SCRA 293)

### Suspension, Disbarment and Other Forms of Discipline

A lawyer who violates such rule or makes possible the illegal practice of law by a layman may, in addition to being held for contempt, be disciplined, suspended or disbarred for misconduct by the court. (Beltran vs. Abad, 132 SCRA 492)

### Criminal Liability

#### US vs. Durban, 36 Phil 797

Pretending to be a lawyer can be ground for estafa even if the case he handles as a lawyer is successfully managed. In this case, the Court ruled:

The defendant therefore has violated this provision of law; and the question is whether or not he is guilty of estafa, as having defrauded another by falsely pretending to possess a qualification not actually possessed by him.

As the accused successfully managed the litigation which he undertook to conduct there might at first view seem to be room for the contention that the complaining witness was not defrauded within the meaning of the provision of the Penal Code referred to above. But we believe that this provision is not tenable. It would seem to be clear that one who, falsely representing his own qualifications, renders a service which the law expressly declares to be unlawful defrauds the person who is in good faith receives and pays for such services. In *United States vs. Del Castillo* (35 Phil 13), this Court held that a man who obtains the title deeds of another upon the false representation that he is qualified to represent him in litigation in a court of a justice of the peace is guilty of estafa.

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### RA 6713 Code of Conduct and Ethical Standards for Public Officials (Criminal Liability)

For violation of R.A. 6713, a government official forbidden to practice law may be held criminally liable for imprisonment into exceeding 5,000 or both, and in the discretion of a court with competent jurisdiction, disqualification to hold office

### Section 7. Prohibited Acts and Transactions

In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited transactions of any public official employee and are hereby declared unlawful:

- (a) Financial and material interest. — Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.
- (b) Outside employment and other activities related thereto. — Public officials and employees during their incumbency shall not:
  - (1) Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;
  - (2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or
  - (3) Recommend any person to any position in a private enterprise which has a regular or pending official transaction with their office.

These prohibition shall continue to apply for a period of one (1) year after resignation, retirement, or separation from public office, except in case of subparagraph (b)(2) above, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one-year prohibition shall likewise apply.

### Section 11. Penalties

- (a) Any public official or employee, regardless of whether or not he holds office or employment in casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) month's salary or suspension of one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or both, and in the discretion of the court of competent jurisdiction, disqualification to hold public office.

### Cases

### Rosa Yap Paras vs. Justo De Jesus Paras

This lawyer had many transgressions:

- Forged his wife's signature in the bank and other loans
- Concubinage, abandonment of wife and children
- Practicing law even while under suspension

In this case, the Supreme Court imposed upon him the additional suspension of 6 months for practicing law immediately after his one year suspension was over but without waiting for formal lifting of the suspension by the Supreme Court.

This, notwithstanding the fact that in another case he had already been disbarred. Said the Court:

In *Sanchez vs. Torres*, the Court ruled that the penalty of suspension or disbarment can no longer be imposed on a lawyer who had been previously disbarred. Nevertheless, it resolved the issue on the lawyer's personal file in the OBC. Hence, the Court held that respondent therein should be suspended from the practice of law, although the said penalty can no longer be imposed in view of his previous disbarment.

The Supreme Court also added another doctrine in this case, to wit:

In this case, the OBC correctly pointed out that respondent's suspension period became effective on May 23, 2001 and lasted for one (1) year, or on May 22, 2002. Thereafter, respondent filed a motion for the lifting of his suspension. However, soon after this filing and without waiting for a Court order approving the same, respondent admitted to accepting new clients and cases, and even working on an amicable settlement for his client with the Department of Agrarian Reform. Indubitably, respondent engaged in the practice of law without waiting for the Court order lifting the suspension order against him, and thus, he must be held administratively liable thereafter.

### In Re: Petition to Sign the Roll of Attorneys, B.M. 2540

Michael A. Medado thought that having signed the logbook at the PICC he had already signed the Roll of Attorneys. Meanwhile, his work involved corporate tasks and taxation matters. He did not do litigation.

When he attended one of the MCLE arranged by the IBP, he was asked for his roll number but could not give what is asked. Finally after 30 years after having taken oath in 1980 he filed a petition to be allowed to sign the Roll of Attorney.

The OBC (Office of the Bar Confidant) found his reasons flimsy and recommended denial of his petition for gross negligence, gross misconduct, and utter lack of merit. However, the Supreme Court ruled:

For one, petitioner demonstrated good faith and good moral character when he finally filed the instant Petition to Sign in the Roll of Attorneys. We note that it was not a third party who called this Court's attention to petitioner's omission; rather, it was Medado himself who acknowledged his own

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lapse, albeit after the passage of more than 30 years.

Finally, Medado appears to have been a competent and able legal practitioner, having held various positions at the Laurel Law Office, Petron, PetroPhil Corporation, the Philippine National Oil Company, and the Energy Development Corporation.

All these demonstrate Medado's worth to become a full-fledged member of the Philippine Bar. While the practice of law is not a right but a privilege, this Court will not unwarrantedly withhold this privilege from individuals who have shown mental fitness and moral fiber to withstand the rigors of the profession.

The court discussed Medado's defense of honest mistake:

While an honest mistake of fact could be used to excuse a person from the legal consequences of his acts as it negates malice or evil motive, a mistake of law cannot be utilized as a lawful justification, because everyone is presumed to know the law and its consequences. *Ignorantia facti excusat; ignorantia legis neminem excusat.*

Applying these principles to the case at bar, Medado may have at first operated under an honest mistake of fact when he thought that what he had signed at the PICC entrance before the oath-taking was already the Roll of Attorney. However, the moment he realized that what he signed was merely an attendance record, he could no longer claim an honest mistake of fact as a valid justification. At that point, Medado should have known that he was not a full-fledged member of the Philippine Bar because of his failure to sign the Roll of Attorneys, as it was the act of signing therein that would have made him so. When, in spite of this knowledge, he chose to continue practicing law without taking the necessary steps to complete all requirements for admission to the Bar, he willfully engaged in the unauthorized practice of law.

Important doctrine about Canon 9 in the Medado Case:

Canon 9 — A lawyer shall not, directly or indirectly, assist in the unauthorized practice of law.

While a reading of Canon 9 appears to merely prohibit lawyers from assisting in the unauthorized practice of law, the unauthorized practice of law by the lawyer himself is subsumed under this provision, because at the heart of Canon 9 is the lawyer's duty to prevent the unauthorized practice of law. This duty likewise applies to law students and Bar candidates. As aspiring members of the Bar, they are bound to comport themselves in accordance with the ethical standards of the legal profession.

Turning now to the applicable penalty, previous violations of Canon 9 have warranted the penalty of suspension from the practice of law. As Medado is not yet a full-fledged lawyer, we cannot suspend him from the practice of law. However, we see it fit to allow him to sign in the Roll of Attorneys one (1) year after the receipt of this Resolution. For his transgression of the prohibition against the

unauthorized practice of law, we likewise see it fit to fine him in the amount of P32,000. During the one year period, petitioner is warned that he is not allowed to engage in the practice of law, and is sternly warned that doing any act that constitutes the practice of law before he has signed in the Roll of Attorneys will be dealt with severely by this Court.

## VI. PUBLIC OFFICIALS AND THE PRACTICE OF LAW

These are the full-fledged lawyers that cannot or is prohibited to practice law:

- a. Those former government attorneys that has been prohibited or disqualified to practice law in certain cases in which he has intervened
- b. Those that has been absolutely prohibited by the Constitution, by law, or by the Rules of Court
- c. Those that has been partially prohibited by the Constitution, by law or by the Rules of Court

### A. Prohibition or Disqualification of Former Government Attorneys

Rule 6.03 of the Code of Professional Responsibility prohibits a former government lawyer from accepting employment in connection with any matter in which he intervened;

The prohibition states: A lawyer shall not, after leaving government service, accept engagement or employment in connection with any matter in which he had intervened while in the said service.

#### Adverse-Interest vs. Congruent-Interest Conflict

In the "adverse-interest conflict" a former government lawyer is enjoined from representing a client in private practice if the matter is substantially related to a matter that the lawyer dealt with while employed by the government and if the interests of the current and former clients are adverse

The "congruent-interest conflict" prohibits the lawyer from representing a private practice client even if the interests of the former government client and the new client are entirely parallel. The "congruent-interest representation conflict" unlike the "adverse-interest conflict", is unique to former government lawyers. (PCGG vs. Sandiganbayan, et. al., G.R. No 151809-12, April 12, 2005)

In other words, the prohibition to engage in the private practice of profession ceases after separation from office, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one-year prohibition shall likewise apply.

#### General Law

Section 7(b)(2) of RA 6713 prohibit public officials and employees, during their incumbency, from engaging in the private practice of their profession "unless authorized by the Constitution or law provided that such practice will not conflict or tend to conflict with their official functions." This is the general law which applies

## BASIC LEGAL ETHICS NOTES

to all public officials and employees. (Ramos vs. Rada, 65 SCRA 179)

### **Omico Mining and Industrial Corp. vs. Vallejo, 63 SCRA 285 (Prohibition of Practice)**

This is a case of a judge engaging in the private practice of his profession as a lawyer

The contract of professional services entered into between private respondent and the petitioners, while the former was still a judge of the CFI, constituted private practice of law and in contravention of the express provision of Section 35 of Rule 138 of the Revised Rules of Court, to wit:

No judge or other official or employee of the superior courts or of the Office of the Solicitor General, shall engage in private practice as a member of the bar or give professional advice to clients.

### **B. Absolute Prohibition — Public Officials Who Cannot Practice Law**

1. Judges and other officials and employees of superior courts or of the Office of the Solicitor General (Sec. 35, Rule 138, Rules of Court)
2. Official and employee of other government prosecution offices (People vs. Villanueva)
3. President, Vice President and members of the cabinet and their deputies and assistants (Sec. 13, Art. VII, 1987 Constitution)
4. Members of the Constitutional Commissions (Sec. 2, Art IX(A), 1987 Constitution)
5. Ombudsman and his deputies (Sec. 8 Art. IX, 1987 Constitution)
6. Civil Service Officers or employees whose duties and responsibilities require that their entire time be at the disposal of the government (Ramos vs. Rada, *supra*)
7. Governors, City or Municipal Mayors (Sec. 90(a), RA 7160)
8. Those who by special law are prohibited from engaging in the practice of the legal profession (Sec. 7(b)(2), RA 6713)

### **Absolute Prohibition Mnemonics**

#### **JOESCO PO**

- Judges,
- Officials/Employees of Superior Courts,
- Civil Service,
- Office of the Solicitor General,
- Prosecution Offices

#### **P@GCOR**

- President @pil ang VP, cabinet and their deputies and assistants,
- Governors and Mayors,
- Constitutional Commission members
- Ombudsman and his Deputies
- RA 6713 (sec. 7[b][2])

### **C. Partial Disqualification — Public Official Who Can Practice Law With Restrictions**

No Senator or Member of the House of Representatives may personally appear as counsel before (a) any court of justice or before (b) the electoral tribunals, or (c) quasi-judicial and other administrative bodies. (Article VI, Sec. 14, 1987 Constitution)

1. A lawyer member of the legislature is only prohibited from appearing or filing pleadings as "counsel before any court of justice or before electoral tribunals, or quasi-judicial and other administrative bodies". (Sec. 14, Art. VI; Sec. 17, Art. VII of the 1897 Constitution)
2. Sangunian members may practice their profession, engage in any occupation, to teach in schools, except during session hours. Provided, that Sangunian members who are members of the bar shall NOT:
  - a. Appear as counsel before any court in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party.
  - b. Appear as counsel in any criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office.
  - c. Collect any fee for their appearance in administrative proceedings involving the local government unit of which he is an official; and
  - d. Use property and personnel of the government except when the Sangunian member concerned is defending the interest of the government (sec. 90(b), RA 7160)
3. As Punong Barangay, respondent should have therefore obtained the prior written permission of the Secretary of the Interior and Local Government before he entered his appearance as counsel. (Catu vs. Rellosa)
4. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural or industrial undertaking without a written permission from the head of the Department (Sec. 12, Rule XVII, Revised Civil Service Rules)

As a condition of the pension provided under RA 910, no retiring justice or judge of a court of record or any city or municipality judge during the time he is receiving said pension shall appear as counsel before any court in:

- a. Any civil case wherein the government or any subdivision or instrumentality thereof is the adverse party
- b. Any criminal case wherein an officer or an employee of the government is accused of an offense committed in relation to his office
- c. Collect any fees for his appearance in any administrative proceedings to maintain an interest adverse to the government, provincial or municipal, or to any of its legally constituted officers (Sec. 1, RA 910)

### **VII. LAWYERS AUTHORIZED TO REPRESENT THE GOVERNMENT**

## BASIC LEGAL ETHICS NOTES

### Standing in Court of Person Authorized by the Government

Any official or other persons appointed in accordance with law to appear for the Government of the Philippines shall have all the rights of a duly authorized member of the bar to appear in any case in which the government has an interest, direct or indirect (Sec. 33, Rule 138, Rules of Court)

Examples:

- Solicitor General
- Assistant Solicitor General
- State Solicitors
- Assistant Solicitors
- State Prosecutors or special counsel in the Department of Justice
- Provincial and city prosecutors and other attorneys in other legal offices of the government

Generally, a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of her duties as a government official. However, if said misconduct as a government official also constitutes a violation of her oath as a lawyer and the CPR, then she may be subject to disciplinary sanction by the Supreme Court.

### Fuji vs. Dela Cruz

Lawyers in government service should be more conscientious with their professional obligations consistent with the time-honored principle of public office being a public trust. The ethical standards under the Code of Professional Responsibility are rendered even more exciting as to government lawyers because they have the added duty to abide by the policy of the State to promote a high standard of ethics, competence, and professionalism in public service. In this case, respondent's negligence evinces a failure to cope with the strict demands and high standards of public service and the legal profession (819 SCRA 602)

### Republic, Represented by the LRA vs. Raymundo Viaje

The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power to "deputize legal officers of the government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases.

But it is likewise settled that the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all orders, notices, and decisions.

A lawyer's oath is not mere facile words, drift and hollow, but sacred trust that must be upheld and kept inviolable. The substance and gravity behind these words may be understood in the light of the substance and gravity behind the oath being taken. In a sense, the oath embodies the ideals by which the lawyer lives by in the practice of legal profession. This is why the Lawyer's Oath has been likened to a condensed version of the canons of professional responsibility. (Sebastian vs. Cali)

Those in the legal profession must always conduct themselves with honest[y] and integrity in all their dealings. Members of the Bar took their oath to conduct themselves according to the best of their knowledge and discretion with all good fidelity as well to the courts as to their clients as to delay no man for money or malice. These mandates apply especially to dealings of lawyers with their clients considering the highly fiduciary nature of their relationship. (Antero M. Sison vs. Atty. Manuel N. Camacho)

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## CODE OF PROFESSIONAL RESPONSIBILITY

### Code of Professional Responsibility

The *Code of Professional Responsibility* (CPR) is the controlling provision with regards to the ethical standards of the lawyers in the Philippines. However, the old *Canons of Professional Ethics* (CPE) may be suppletory to the CPR where there are no applicable provisions in certain cases.

It was promulgated on June 21, 1988.

The CPR has twenty-two (22) Canons, with each Canon having its own respective Rules.

Note that there are four folds duties of a lawyer. Each of these duties has Canons that are assigned to it.

### Duties and Responsibilities of a Lawyer Under the CPR

1. Duty to the Society (Canon 1-6)
2. Duty to the Legal
  - a. Canon 7-9
  - b. IBP Rule 139-A
    - i. Membership, and
    - ii. dues
3. Duty to the Courts (Canons 10-13)
4. Duty to the Clients
  - a. Canon 14-22
  - b. Attorney's Fees
    - i. Acceptance Fees
    - ii. Contingency Arrangement
    - iii. Attorney's Liens
    - iv. Fees and Controversies with Clients
    - v. Quantum Meruit

## VIII. THE LAWYER'S OATH

## BASIC LEGAL ETHICS NOTES

### CHAPTER I

#### The Lawyer and Society

Chapter I of the CPR pertains to the duty of the lawyer to the society. In summary, Chapter I is about:

- a) Respect for law and legal processes
- b) Efficient and convenient legal services
- c) True, honest, fair, dignified and objective information on legal services
- d) Participation in legal education programs

**CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.**

A lawyer shall:

- a. Uphold the Constitution
- b. Obey the laws of the land
- c. Promote respect for law and legal processes

**Rule 1.01 A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.**

**Rule 1.02 A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.**

#### Unlawful Conduct

##### *Angel Bautista vs. Atty. Ramon Gonzales*

However, respondent notes that Canon 10 of the old Canons of Professional Ethics, which states that "the lawyer should not purchase any interests in the subject matter of the litigation which he is conducting," does not appear anymore in the new Code of Professional Responsibility. He therefore concludes that while a purchase by a lawyer of property in litigation is void under Art. 1491 of the Civil Code, such purchase is no longer a ground for disciplinary action under the new Code of Professional Responsibility.

This Contention is without merit. The very first Canon of the new Code states that "a lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes." Moreover, Rule 138, Sec. 3 of the Revised Rules of Court requires every lawyer to take an oath to obey the laws of the Republic of the Philippines as well as the legal orders of the duly constituted authorities therein." And for any violation of this oath, a lawyer may be suspended or disbarred by the Supreme Court (Rule 138, Sec. 27, Revised Rules of Court). All these underscore the role of the lawyer as vanguard of our legal system. The transgression of any provision of law by a lawyer is a repulsive and reprehensible act which the Court will not countenance. In the instant case, respondent, having violated Art. 1491 of the Civil Code, must be held accountable for both his client and to society.

##### *Gonzaga vs. Realubin*

The Court agrees with the foregoing findings. The very first Canon of the Code of Professional Responsibility states that a "lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes." Moreover, Rule 138, Sec. 3 of the Revised Rules of Court requires every lawyer to take an oath to obey the laws of the Republic of the Philippines as well as the legal orders of the duly constituted authorities therein." And for any violation of this oath, a lawyer may be suspended or disbarred by the Supreme Court (Rule 138, Sec. 27, Revised Rules of Court). All these underscore the role of the lawyer as vanguard of our legal system. The transgression of any provision of law by a lawyer is a repulsive and reprehensible act which the Court will not countenance. In the instant case, respondent clearly violated the provisions of the Revised Administrative Code, more particularly Sec. 246 thereof.

#### Immoral Conduct

##### *Julia Narag vs. Atty. Dominador Narag*

Immoral conduct has been defined as that conduct which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. Furthermore, such conduct must not only be immoral, but grossly immoral. That is, it must be so corrupt as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency.

#### Grossly Immoral Conduct

A grossly immoral conduct must be:

- a. So corrupt as to virtually constitute a criminal act
- b. So unprincipled as to be reprehensible to a high degree
- c. Committed under such scandalous or revolting circumstances as to shock the common sense of decency (*Advincula vs. Macabata*)

1. *Adultery, bigamy, concubinage abandonment of legitimate wife and family, and refusal to support his legitimate or illegitimate children*

##### *Paz Toledo vs. Atty. Jesus Toledo*

Paz spent for law school of Jesus starting 2nd year. After passing the Bar, Jesus abandoned Paz and cohabited with a woman who bore 3 children for him.

2. *Seducing a woman to have carnal knowledge*

##### *Barrientos vs. Daarol*

Here, respondent, already a married man and about 41 years old, proposed love and marriage to complainant, then still 20 years old minor, knowing that she did not have the required legal capacity. Respondent then succeeded in having carnal relations with the complainant by deception, made her pregnant, suggested abortion, breached his promise to marry her, and then deserted her and the child. Respondent is therefore guilty of deceit and grossly immoral conduct.

## BASIC LEGAL ETHICS NOTES

3. A case of married lawyer who impregnated a 20 year old woman and eventually abandoned her

### **De Los Reyes vs. Aznar**

In the present case, it was highly immoral of respondent, a married man with children, to have taken advantage of his position as chairman of the college of medicine in asking complainant, a student in the said college, to go with him to Manila where he had carnal knowledge of her under the threat that she would flunk in all her subjects in case she refused.

4. Delivering bribe money to a judge on request of client

### **Lee and Moreno vs. Judge Abastillas**

WHEREFORE, respondent Judge Renato E. Abastillas, Regional Trial Court, Branch 50 Bacolod City, is hereby found GUILTY of serious misconduct in Adm. Matter No. RTJ-92863 for having met with persons involved and/or interested in Criminal Cases Nos. 10010 and 10011 entitled "People v. Johnson Lees and Sonny Moreno" of the Regional Trial Court of Bacolod City, for the purpose of discussing or soliciting bribe in connection said cases and is hereby DISMISSED from office, with forfeiture of all retirement benefits and accrued leave credits and with prejudice to re-employment in any branch or instrumentality of government, including government owned or controlled corporations.

This Court holds Atty. Enrique S. Chua administratively liable in Adm. Case No. 3815 for violation of Rule 1.01 of the Code of Professional Responsibility for allegedly bribing Judge Abastillas.

5. Issuance of a lawyer of a series of worthless checks

### **Victoria Heenan vs. Erlina Espejo**

The fact that Atty. Espejo obtained the loan and issued the worthless checks in her private capacity and not as an attorney of Victoria is of no moment. As We have held in several cases, a lawyer may be disciplined not only for malpractice and dishonesty in his profession but also for gross misconduct outside of his professional capacity. While the Court may not ordinarily discipline a lawyer for misconduct committed in his non-professional or private capacity, the Court may be justified in suspending or removing him as an attorney where his misconduct outside of the lawyer's professional dealings is so gross in character as to show him morally unfit and unworthy of the privilege which his licenses and the law confer.

6. Notarizing SPAs not reflecting the true intent of his clients

### **de Miller vs. Miranda**

A lawyer failed to check the original SPA submitted by his secretary. He ended up notarizing a document that did not reflect the true intent of his client.

Worse, the lawyer caused the intercalation of the notarized SPA by inserting handwritten alterations which changed the meaning of the document. This violates Rule 1.01 of the CPR.

7. Deceiving a client for large sums of money for personal interest

### **Fernando Chu vs. Atty. Guico**

Atty. Guico advised a client to raise a large sum of money to obtain a favorable decision in a labor case. Worse, he soon appropriated the money for his personal interest.

It was held as a violation of the Lawyer's Oath and Rule 1.01

### **Acts Not Considered As Grossly Immoral**

#### **Marcayda vs. Mari Wang**

On the other hand, it has been held that mere intimacy between a man and a woman, either of whom possesses no legal impediment to marry, voluntarily carried on and devoid of any deceit on the part of the lawyer, is neither so corrupt nor so unprincipled as to warrant imposition of disciplinary sanction against him as a member of the bar, even if as a result of such relationship the woman gave birth to a child, and so long as he admits the paternity of, and agrees to support such child. He may be disciplined if he subsequently disowns or refuses to support the child

#### **Advincula vs. Macabata**

The acts of respondent, though in turing the head of complainant towards him and kissing her on the lips are distasteful. However, such an act, even if considered offensive and undesirable, cannot be considered grossly immoral.

#### **Toledo vs. Abalos**

A lawyer may not be disciplined for failure to pay a loan; proper remedy is to file an action for collection of sum of money in regular courts.

#### **Lao vs. Medel**

The deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with one-year suspension from the practice of law.

#### **Arciga vs. Maniwang**

There is an area where a lawyer's conduct may not be in consonance with the canons of the moral code but he is not subject to disciplinary action because his misbehavior or deviation from the path of rectitude is not glaringly scandalous. It is in connection with a lawyer's behavior to the opposite sex where the question of immorality usually arises. Whether a lawyer's sexual congress with a woman not his wife or without the benefit of marriage should be characterized as "grossly immoral conduct," will depend on the surrounding circumstances.

This Court in a decision rendered in 1925, when old-fashioned morality still prevailed, observed that "the legislature well knows the frailty of the flesh and the ease with which a man, whose sense of dignity, honor, and morality is not well cultivated, falls into temptation when alone with onw of the fair sex toward whom he feels himself attracted. An occasion that the saying "A fair booty makes many a thief" or "An open door may tempt a saint" has become general." (*People vs. De la Cruz*, 48 Phil. 533, 535)

Segundino admits in his answer that he and Magdalena were lovers and that he is the father of the child Michael. He also admits that he repeatedly promised to marry

## BASIC LEGAL ETHICS NOTES

Magdalena and that he breached that promise because of Magdalena's shady past. She had allegedly been accused in court of oral defamation and had already an illegitimate child before Michael was born.

The Solicitor General recommends the dismissal of the case. In his opinion, respondent's cohabitation with the complainant and his reneging on his promise of marriage do not warrant his disbarment.

### Disbarment for Grossly Immoral Conduct

#### *Almirez vs. Lopez*

Where a lawyer, Arturo P. Lopez, succeeded in having carnal knowledge of Virginia C. Almirez, under the promise of marriage, which he refused to fulfill, although they had already a marriage license and despite the birth of a child in consequence of their sexual intercourse; he married another woman and during Virginia's pregnancy, Lopez urged her to take pills to hasten the flow of her menstruation and he tried to convince her to have an abortion to which she did not agree.

#### *Cabrera vs. Agustin*

Where a lawyer, Francisco Agustin, made Anita Cabrera believe that they were married before Leoncio V. Aglubat in the City Hall of Manila, and, after such fake marriage, they cohabited and she later gave birth to their child.

#### *Toledo vs. Toledo, supra*

Where a lawyer, Jesus B. Toledo, abandoned his lawful wife and cohabited with another woman who bore him a child.

#### *Bolivar vs. Simbol*

The conduct of Abelardo Simbol in making a dupe of Concepcion Bolivar by living on her bounty and allowing her to spend for his schooling and other personal necessities while dangling before her the mirage of a marriage, marrying another girl as soon as he had finished his studies, keeping his marriage a secret while continuing to demand money from complainant, and trying to sponge on her and persuade her to resume their broken relationship after the latter's discovery of his perfidy, are indicative of a character not worthy of a member of the bar.

#### *Quingwa vs. Puno*

Where Flora Quingwa, a public school teacher, who was engaged to lawyer Armando Puno, was prevailed upon by him to have sexual congress with him inside a hotel by telling her that it was alright to have sexual intercourse because, anyway, they were going to get married. She used to give Puno money upon his request. After she became pregnant and gave birth to a baby boy, Puno refused to marry her.

#### *Mortel vs. Aspiras*

Where lawyer Anacleto Aspiras, a married man, misrepresenting that he was single and making a promise of marriage, succeeded in having sexual intercourse with Josefina Mortel. Aspiras faked a marriage between Josefina and his own son Cesar.

#### *Royong vs. Oblena*

Where a lawyer, Ariston Oblena, who had been having an adulterous relationship for fifteen years with Bricia Angeles, a married woman separated from her husband, seduced her eighteen year old niece who became pregnant and begot a child.

**Rule 1.03** A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

**Rule 1.04** A lawyer shall encourage his clients to avoid, end or settle the controversy if it will admit of a fair settlement.

To stir up litigation is crime known as **maintenance** at common law (Agpalo). While the act is not a crime it is proscribed by the rules of legal ethics (Pineda).

**Barratry** is the offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise. It is the lawyers act of fomenting suits among individuals and offering his legal services to one of them for monetary motives or purposes.

**Ambulance chasing** is a lawyer's act of chasing an ambulance carrying the victim of an accident for the purpose of talking to the said victim or relatives and offering his legal services for filing of a case against the person who caused the accident, which spawned a number of recognized evils as follows:

- a. Fomenting litigation with resulting burdens on the courts and the public
- b. Subornation and perjury
- c. Mulcting of innocent persons by judgements upon manufactured causes of action
- d. Defrauding of injured persons having proper causes of action, but ignorant of legal rights and court procedure, by means of contracts which retain exorbitant percentages of recovery and illegal charges for court costs and expenses and by settlements made for quick return of fees and against the just rights of the injured persons.

Ambulance chasing also applies the solicitation of almost any kind of legal business by an attorney, personally through an agent in order to gain employment. (*Linsangan vs. Tolentino*)

#### *Castañeda vs. Ago*

It is the duty of a counsel to advise his client, ordinarily a layman to the intricacies and vagaries of the law, on the merit or lack of merit of his case. If he finds that his client's cause is defenseless, then it is his bounden duty to advise the latter to acquiesce and submit, rather than traverse the incontrovertible. A lawyer must resist the whims and caprices of his client, and temper his clients propensity to litigate. A lawyer's oath to uphold the cause of justice is superior to his duty to his client; its primacy is indisputable.

**Charles Curtis, The Advocate, William Davenport, Voices in Court, 5**

"Compromise is the better part of justice as prudence is the better part of valor", and a lawyer who encourages a

## BASIC LEGAL ETHICS NOTES

compromise is no less than the client's champion in the settlement out of court than he is the client's champion in the battle court.

**CANON 2** — A lawyer shall make his legal services available in an efficient and convenient manner compatible with the independence, integrity and effectiveness of the profession.

**Rule 2.01.** A lawyer shall not reject, except for valid reasons, the cause of the defenseless or the oppressed.

**Rule 2.02.** In such cases, even if the lawyer does not accept a case, he shall not refuse to render legal advice to the person concerned if only to the extent necessary to safeguard the latter's rights.

**Rule 2.03.** A lawyer shall not do or permit to be done any act designed primarily to solicit legal business.

**Rule 2.04.** A lawyer shall not charge rates lower than those customarily prescribed unless the circumstances so warrant.

**CANON 3** — A lawyer in making known his legal services shall use only true, honest, fair, dignified and objective information or statement of facts.

**Rule 3.01.** A lawyer shall not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services.

**Rule 3.02.** In the choice of a firm name, no false, misleading or assumed name shall be used. The continued use of the name of a deceased partner is permissible provided that the firm indicates in all its communications that said partner is deceased.

**Rule 3.03.** Where a partner accepts public office, he shall withdraw from the firm and his name shall be dropped from the firm name unless the law allows him to practice law currently.

**Rule 3.04.** A lawyer shall not pay or give anything of value to representatives of the mass media in anticipation of, or in return for, publicity to attract legal business.

**CANON 4** — A lawyer shall participate in the development of the legal system by initiating or supporting efforts in law reform and in the improvement of the administration of justice.

**CANON 5** — A lawyer shall keep abreast of legal developments, participate in continuing legal education programs, support efforts to achieve high standards in law schools as well as in the practical training of law students and assist in disseminating the law and jurisprudence.

**CANON 6** — These canons shall apply to lawyers in government services in the discharge of their tasks.

**Rule 6.01.** The primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done. The suppression of facts or the concealment of witnesses capable of establishing the innocence of the accused is highly reprehensible and is cause for disciplinary action.

**Rule 6.02.** A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties.

**Rule 6.03.** A lawyer shall not, after leaving government service, accept engagement or employment in connection with any matter in which he had intervened while in said service.

## CHAPTER II

### The Lawyer and the Legal Profession

A summary for the duty of the lawyer to the legal profession:

- a) Integrated Bar of the Philippines (Rule 139-A)
  - i) Rule 139-A
  - ii) Membership and dues
- b) Upholding the dignity and integrity of the profession
- c) Courtesy, fairness, and candor towards professional colleagues
- d) No assistance in the unauthorized practice of law

**CANON 7** — A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the integrated bar.

### Purpose of the IBP

The fundamental purpose of the IBP shall be to elevate the standards of the legal profession, improve the administration of justice, and enable the bar to discharge public responsibility more efficiently (Sec. 2, By Laws of IBP)

The purposes of the Integrated Bar include:

- (1) Assist in the administration of justice;
- (2) Foster and maintain, on the part of its members, high ideals of integrity, learning, professional competence, public service and conduct;
- (3) Safeguard the professional interests of its members;
- (4) Cultivate among its members a spirit of cordiality and brotherhood;
- (5) Provide a forum for the discussion of law, jurisprudence, law reform, pleading, practice and procedure, and the relations of the Bar to the Bench and to the public, and publish information relating thereto;
- (6) Encourage and foster legal education; and
- (7) Promote a continuing program of legal research in substantive and adjective law, and make reports and recommendations thereon. (Sec. 2, By Laws of IBP)

*Note:* (4) and (5) are enumerated as one according to Fr. Dan.

### Membership and Dues

## BASIC LEGAL ETHICS NOTES

1. Only persons in the Roll of Attorneys of the Supreme Court qualifies for the membership of the IBP (Section 1, 139-A, Rules of Court)
2. Every member shall pay annual dues as the Board of Governors shall determine with the approval of the Supreme Court (Sec. 9, Rule 139-A, Rules of Court)

### Effect of Non-Payment of Dues

Default in the payment of annual dues for six months shall warrant suspension of membership in the Integrated Bar, and default in such payment for one year shall be a ground for the removal of the name of the delinquent member from the Roll of Attorneys. (Sec. 10, Rule 139-A, Rules of Court)

However, no action involving the suspension or disbarment of a member or the removal of his name from the Roll of Attorneys shall be effective without the final approval of the Supreme Court. (Sec. 12, Rule 139-A, Rules of Court)

The grant by RA 7432 to senior citizens of exemptions from payment of individual income taxes does not include payment of membership or association dues (Santos vs. Llamas).

**Rule 7.01. A lawyer shall be answerable for knowingly making a false statement or suppressing a material fact in connection with his application for admission to the bar.**

**Rule 7.02. A lawyer shall not support the application for admission to the bar of any person known by him to be unqualified in respect to character, education, or other relevant attribute.**

**Rule 7.03. A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.**

**CANON 8 — A lawyer shall conduct himself with courtesy, fairness and candor towards his professional colleagues, and shall avoid harassing tactics against opposing counsel.**

**Rule 8.01. A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.**

**Rule 8.02. A lawyer shall not, directly or indirectly, encroach upon the professional employment of another lawyer, however, it is the right of any lawyer, without fear or favor, to give proper advice and assistance to those seeking relief against unfaithful or neglectful counsel.**

**CANON 9 — A lawyer shall not, directly or indirectly, assist in the unauthorized practice of law.**

**Rule 9.01. A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the bar in good standing.**

**Rule 9.02. A lawyer shall not divide or stipulate to divide a fee for legal services with persons not licensed to practice law, except:**

**(a) Where there is a pre-existing agreement with a partner or associate that, upon the latter's death, money shall be paid over a reasonable period of time to his estate or to persons specified in the agreement; or**

**(b) Where a lawyer undertakes to complete unfinished legal business of a deceased lawyer; or**

**(c) Where a lawyer or law firm includes non-lawyer employees in a retirement plan even if the plan is based in whole or in part, on a profit sharing agreement.**

## CHAPTER III

### The Lawyer and the Courts

In summary, Chapter III talks about:

- a) Candor, fairness and good faith to the courts
- b) Respect for courts and judicial officers
- c) Assistance in the speedy and efficient administration of justice
- d) Reliance on merits of his/her cause and avoidance of any appearance of influence upon the courts.

**CANON 10 — A lawyer owes candor, fairness and good faith to the court.**

A lawyer's conduct before the court should be characterized by candor and fairness. The administration of justice would gravely suffer if lawyers do not act with complete candor and honesty before the courts (Serana vs. Sandiganbayan)

It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. (Canon 1, Canon of Professional Ethics)

Thus, it has been said of lawyers that "as an officer of the court, it is sworn and moral duty to help build and not destroy unnecessarily the high esteem and regard towards the court is essential to the proper administration of justice. His superior retainer is within the court, which outlasts all his retainers with his clients. (Surigao Mineral Reservation Board vs. Cloribel)

**Rule 10.01. A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.**

A lawyer must be a disciple of truth. He swore upon his admission to the Bar that he will do no falsehood nor consent to the doing of any in court and he shall conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients. He should bear in mind that as an officer of the court his high vocation is to correctly

## BASIC LEGAL ETHICS NOTES

inform the court upon the law and the facts of the case and to aid it in doing justice and arriving at correct conclusions. The courts, on the other hand, are entitled to expect only complete honesty from lawyers appearing and pleading before them. While a lawyer has the solemn duty to defend his clients rights and is expected to display the utmost zeal in defense of his clients cause, his conduct must never be at the expense of truth. (Young vs. Batuegas)

### Cases of Falsehood Disciplined

- a) Falsely stating in a deed of sale that the property is free from all liens and encumbrances when it is not so. (Sevilla vs. Zoleta)
- b) Making it appear that a person long dead executed a deed of sale in his favor. (Montery vs. Aryata)
- c) Encashing a check payable to a deceased cousin by signing the latter's name on the check. (In re: Samaniego)
- d) Falsifying the power of attorney and using it in collecting the money due to the principal and appropriating the money for his own benefit. (In re: Rusina)
- e) Alleging in one pleading that his clients were merely lessees of the property involved, but in another pleading, alleges that his clients were owners of the same property (Chavez vs. Viola)

### *Magsaysay Maritime Corp. vs. Mazaredo*

In an actual case, the lawyer violated the CPR when they misled the Labor Arbitrator, the NLRC, and the Court of Appeals into believing that a favorable Medical Report of a company designated physician exists which supposedly shows that an employee's condition was not work-connected and not compensable, when in fact there is none.

It would appear that such medical report was contrived in order to satisfy the legal requirement that the company designated physician must make a definitive assessment of the employee's fitness to work in order to justify a denial of disability benefits.

The CPR provides that a lawyer shall not do any falsehood nor consent to the doing of any in Court, nor shall he mislead or allow the Court to be misled by any artifice (Rule 10.1). Suffice it to state that lawyers should not transcend the bounds of propriety and commit a travesty before this Court by willfully, intentionally and deliberately resorting to falsehood and deception in handling their client's case in order to misguide, obstruct and impede the proper administration of justice.

**Rule 10.02. A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.**

If not faithfully quoted, the decisions and rulings of the court may lose their proper and correct meaning, to the detriment of other courts, lawyers and the public who

may thereby be misled. (Insular Life Assurance Co. Employee Association vs. Insular Life Assurance Co.)

A lawyer should always bear in mind that he is an officer in the temple of justice whose high vocation is to correctly inform the court and to aid it in doing justice and arriving at the correct conclusion. (Pangan vs. Ramos)

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes. (Pangan vs. Ramos)

**Rule 10.03. A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.**

The rules of procedures are intended to facilitate the delivery of justice to those to whom it is due without unnecessary expense and waste of time for truly justice delayed is justice denied. (Acpalo)

Filing multiple actions constitutes an abuse of the Court's processes. It constitutes improper conduct that tends to impede, obstruct and degrade justice. Those who file multiple or repetitive actions subject themselves to disciplinary action for incompetence or willful violation of their duties as attorneys to act with all good fidelity to the courts, and to maintain only such actions that appear to be just and consistent with truth and honor. (Olivares, etc. vs. Atty. Arsenio)

A lawyer should not ignore known customs or practice of the bar or of a particular court, even when the law permits, without giving timely notice to the opposite counsel. As far as possible, important agreements affecting the rights of clients should be reduced to writing, but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by the Rules of Court (Canon 22, CPE)

Litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust. (Canlas vs. CA). Technicalities should give way to the realities of the situation. (Economic Insurance Co. vs. Uy Realty Co.)

**CANON 11 — A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.**

All lawyers are expected to recognize the authority of the Supreme Court and obey its lawful processes and orders. Despite errors which one may impute on the orders of the Court, these must be respected, especially

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by the bar or the lawyers who are themselves officers of the courts. (Yap-Paras vs. Atty. Paras)

Liberally imputing sinister and devious motives and questioning the impartiality, integrity and authority of the members of the Court result in the obstruction and perversion of the dispensation of justice. (Estrada vs. Sandiganbayan)

Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected. (Canon 1, CPE)

### **Rule 11.01. A lawyer shall appear in court properly attired.**

Sloppy or informal attire adversely reflects on the lawyer and demeans the dignity of the solemnity of court proceedings. If he dresses improperly he may be cited for contempt. (Agpalo)

### **Rule 11.02. A lawyer shall punctually appear at court hearings.**

It is the duty of the lawyer not only to his client, but also to the courts and to the public to be punctual in attendance, and to be concise and direct in the trial and disposition of causes. (Canon 21, CPE)

Inexcusable absence from, or repeated tardiness in attendance in attending pre-trial or hearing may not only subject the lawyer to disciplinary action, but may also prejudice his client who, as a consequence thereof, may be non-suited, declared in default or adjudged ex parte, as the case may be (Agpalo).

### **Rule 11.03. A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.**

In championing the cause of his clients, a lawyer should not resort to insulting or disparaging language amounting to disrespect toward the court. While he must advocate his client's cause in utmost earnest and with maximum skill he can marshal, he is not a liberty to resort to arrogance, intimidation and innuendo. (Agpalo)

He should not think that he can win his case by sheer multiplication of words nor hide his weakness of his client's case with inflammatory language. While the courts are not unreceptive to comment and criticisms of their decisions provided they are fair and dignified, lawyers should not transcend the limits of fair comments, otherwise they deserve the Court's rebuke. (Agpalo)

A lawyer who uses intemperate, abusive, abrasive or threatening language betrays the weakness of his client's cause, shows disrespect to the court, disgraces the bar and invites the exercise by the court of its disciplinary power. (SMR vs. Cloribel)

### **Instances of Disrespectful Language**

- 1) Categorizing the Supreme Court decision as false, erroneous and illegal (SMR vs. Cloribel)
- 2) Describing the Judge's attitude as unjust, hostile, vindictive and dangerous (Cornejo vs. Judge Tan)
- 3) Stating that "justice is blind as also deaf and dumb" (In re: Almacen)
- 4) Attributing to the Supreme Court acts of dismissing judges "without rhyme and reason" and disbarring lawyers "without due process" (Zaldivar vs. Gonzales)
- 5) By branding the Court of Tax Appeals and the members of its first division as "totally unaware or ignorant" of Section 7(a)(3) of RA 9262, and making other equally harsh statements, the petitioners plainly assailed the legal elarning of the members of the CTA First Division to hold such language as reflective of a very deliberate move on the part of the petitioners to denigrate the CTA and the members of its Flrst Division is not altogether unwarranted. (Habwek vs. Court of Tax Appeals)

### **Rule 11.04. A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.**

A lawyer shall be reminded of his primary duty to assist the court in the administration of justice. It bears stressing that the relations between counsel and judge should be based on mutual respect and on a deep appreciation by one of the duties of the other. It is upon their cordial relationship and mutual cooperation that the hope of our people for speedy and efficient justice rests. (Abiera vs. Judge Maceda)

If a court official or employee or a lawyer is to be disciplined, the evidence against him should be substantial, competent and derived from direct knowledge, not on mere allegations, conjectures, suppositions, or on the basis of hearsay. (Cervantes vs. Atty. Sabio)

Lawyers are prohibited to attribute motives to a judge not supported by the record, lawyers must however be courageous enough to point out errors, arbitrariness, and injustices of courts and judges. The fear of provoking displeasure of the affected judges must not deter them from complying with their civil and legal duty to object to, oppose, and protest against illegal or erroneous judicial decisions, resolutions, acts, or conduct. (People vs. Carillo)

### **Rule 11.05. A lawyer shall submit grievances against a Judge to the proper authorities only.**

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The Supreme Court shall have administrative supervision over all courts and the personnel thereof. (Section 6, Art. XIII, 1987 Constitution)

### Rights and Duties of a Lawyer to Criticize Courts

1. Lawyers have the same rights as those enjoyed by any citizen to comment on and criticize the actuations of a judge.
2. Criticisms shall be bonafide and shall not spill over walls of decency and propriety.
3. The duty of the bar to support the judge against unjust criticisms and clamor does not preclude a lawyer from filing administrative complaints against erring judges or from acting as counsel for clients, who have legitimate grievances against them.

But the lawyer should file charges against the judge before the proper authorities only and after proper circumspection and without the use of disrespectful language and offensive personalities so as not to unduly burden the court in the discharge of its functions. (Urbina vs. Maceren)

### CANON 12 — A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. (Sec. 16, Art. II, 1987 Constitution)

The filing of another action concerning the same subject matter, in violation of the doctrine of res judicata, runs counter to this Canon. (Siy Lim vs. Atty. Montano)

While it is true that lawyers owe "entire devotion" to the cause of their clients, it cannot be emphasized enough that their first and primary duty is "not to the client but to the administration of justice." Canon 12 of the Code of Professional Responsibility states that "A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice." Thus, in the use of Court processes, the lawyer's zeal to win must be tempered by the paramount consideration that justice be done to all parties involved, and the lawyer for the losing party should not stand in the way of the execution of a valid judgment. (Salabao vs. Atty. Villaruel)

This is a fundamental principle in legal ethics and professional responsibility that has iterations in various forms. Because a lawyer is an officer of the court called upon to assist in the administration of justice, any act of a lawyer that obstructs, perverts, or impedes the administration of justice constitutes misconduct and justifies disciplinary action against him. (Salabao vs. Atty. Villaruel)

### Rule 12.01. A lawyer shall not appear for trial unless he has adequately prepared himself on the law and the facts of his case, the evidence he will adduce and the order of its profference. He should also be ready with the original documents for comparison with the copies.

A newly hired counsel who appears in a case in the midstream is presumed and obliged to acquaint himself with all the antecedent processes and proceedings that have transpired in the record prior to his takeover. (Villasis vs. CA)

A lawyer who is presenting documentary exhibits must also be ready with the originals thereof — to avoid objections — which ordinarily delay the proceedings. (Pineda)

### Rule 12.02. A lawyer shall not file multiple actions arising from the same cause.

#### Forum Shopping

Forum shopping is the filing of the repetitious suits in different courts committed through the following acts:

1. Going from one court to another in the hope of securing a favorable relief in one court, which another court has denied
2. Filing repetitious suits or proceedings in different courts concerning the same subject matter after one court has decided the suit with finality
3. Filing a similar case in a judicial court after receiving an unfavorable judgement from an administrative tribunal
4. Mere filing of several cases based on the same incident does not necessarily constitute forum shopping. The question is whether the several actions filed involved the same transactions, essential facts and circumstances. If they involve essentially different facts, circumstances and causes of action there is no forum shopping. (Paredes vs. Sandiganbayan)

#### Penalties for Violation Against Forum Shopping

Section 5, Rule 7, Rules of Civil Procedure:

The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the

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corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

**Rule 12.03. A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.**

Motions for extension are not granted as a matter of right but in the sound discretion of the court, and lawyers should never presume that their motions for extension or postponement will be granted or that they will be granted the length of time they pray for. Due diligence requires that they should conduct a timely inquiry with the division clerks of court of the action on their motions and the lack of notice thereof will not make them any less accountable for their omission. (Ramos vs. Atty. Dajoyag)

The Court frowns on lawyers' practice of repeatedly seeking extensions of time to file pleadings and thereafter simply letting the period lapse without submitting any pleading or even any explanation or manifestation of their failure. The same principle applies more forcefully to motions for continuance. Postponement is not a matter of right, but of sound judicial discretion. (Edrial vs. Quilat-Quilat)

**Rule 12.04. A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.**

Acceptance of money from a client establishes an attorney-client relationship and give rise to the duty of fidelity to the client's cause. Once a lawyer agrees to handle a case, it is the lawyer's duty to serve the client with competence and diligence. (Ignacio vs. Atty. Alviar)

In NPC-DAMA vs. NAtional Power Corporation, the Office of the Solicitor General failed to properly provide the appropriate advice to the NPC in the matter of accepting the Supreme Court's ruling on the effect of final judgement. Instead, the OSG used its efforts and resources to look for legal loopholes and misused its knowledge of court procedure to relieve the NPC of the final ruling or otherwise forestall their inevitable execution. Clearly, the OSG overstepped due bounds in protecting the interests of the NPC.

In failing to file the appellant's brief on behalf of his client, respondent has fallen short of his duties as counsel set forth in this Rule. (Figueras vs. Jimenez)

Once a judgement becomes final and executory, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgement sets at naught the role of courts in disposing justiciable controversies with finality. (Aguilar vs. Manila Banking Corp.)

Lawyers should not resort to nor about the resort of their clients, to a series of actions and petitions for the purpose of thwarting the execution of a judgement that has long become final and executory. (Perez vs. Lantin)

**Rule 12.05. A lawyer shall refrain from talking to his witness during a break or recess in the trial, while the witness is still under examination.**

Purpose: To prevent suspicion that he is coaching the witness what to say during the resumption of the examination the rationale therefore is to uphold and maintain fair play with other party and to prevent the examining lawyer from being tempted to coach his own witness to suit his purpose.

**Rule 12.06 — A lawyer shall not knowingly assist a witness to misrepresent himself or to impersonate another.**

The witness who commits misrepresentation is criminally liable for False Testimony either under Art. 181 or 183 of the Revised Penal Code depending upon the nature of the case. The lawyer who induces a witness to commit false testimony is equally guilty as the witness.

Subornation of Perjury is committed by a person who knowingly and willfully procures another to swear falsely and the witness suborned does not testify under circumstances rendering him guilty of perjury. (US vs. Ballena)

**Rule 12.07. A lawyer shall not abuse, browbeat or harass a witness nor needlessly inconvenience him.**

In People vs. Nuguid, it was deemed highly inconsiderate for the prosecutor and the defense counsel to trade quips at the precise time the victim, Rowena was reliving her harrowing experience. Courts are looked up to by the people where litigants are heard, rights and conflicts are settled and justice solemnly dispensed. Levity has no place in the courtroom during the examination of the victim of rape, and particularly at her expense.

**Rule 12.08. A lawyer shall avoid testifying in behalf of his client, except:**

- (a) on formal matters, such as the mailing, authentication or custody of an instrument, and the like; or
- (b) on substantial matters, in cases where his testimony is essential to the ends of justice, in which event he must, during his testimony, entrust the trial of the case to another counsel.

The underlying reason for the impropriety of a lawyer acting in that dual capacity lies in the difference between

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the respective functions of a witness and an advocate. The lawyer will find it hard to disassociate his relation to the party as witness. Even as he can do so, the dual relationship would invite embarrassing criticism. Although his seal as a lawyer may not influence his testimony as a witness, an even critical public is only apt to place such a construction upon it.

A lawyer's primary duty is to assist the courts in the administration of justice. Any conduct that tends to delay, impede or obstruct the administration of justice contravenes these obligations. Otherwise, the lawyer violates Canon 12 of the CPR which directs lawyers to obey the laws of the land and to promote respect for the law and the legal processes.

Such act also disregards the lawyer's duty to assist in the speedy and efficient administration of justice, and the prohibition against unduly delaying a case by misusing court processes. (Williams vs. Enriquez)

**CANON 13 — A lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing the court**

**Rule 13.01. A lawyer shall not extend extraordinary attention or hospitality to, nor seek opportunity for cultivating familiarity with Judges.**

Marked attention and unusual hospitality on the part of a lawyer to a judge, uncalled for by the personal relations of the parties, subject both the judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with the judge as to the merits of a pending cause and deserves rebuke and denunciation for any device or attempt to gain from a judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the judge's station, is the only proper foundation for cordial personal and official relations between bench and bar. (Canon 3, CPE)

Purpose: To protect the good name and reputation of the judge and the lawyer. A lawyer who resorts to such practices of seeking familiarity with judges dishonors his profession and a judge who consents to them is unworthy of his high office.

**Rule 13.02. A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party.**

Newspaper publication by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise the due administration of justice. Generally, they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymous. An ex parte reference to the facts should not go beyond quotation from the records and papers on file in the

court; but even in extreme cases it is better to avoid an ex parte statement. (Canon 20, CPE)

Publications by a lawyer concerning a pending litigation may interfere with a fair trial in court and otherwise interfere with impartial administration of justice. (Cruz vs. Salva)

Picketing is a form of public expression by a group of sentiments or opinions on a particular matter. It should not be held to influence the court in a particular manner. The duty and responsibility of advising picketers and their leaders that what they are doing is contemptuous rests primarily and heavily upon their lawyers who, as officers of the court, are duty bound to appraise them on proper decorum and attitude towards the court of justice. (Nestle Phil. Inc. vs. Sanchez)

### Test When Public Statements are Contemptuous

1. The character of the act done and its direct tendency to prevent and obstruct the discharge of official duty.
2. In a concluded litigation, a lawyer enjoys wider latitude of comment or criticism of the decision of a judge or his actions.
3. It has been held that a newspaper publication tending to impede, obstruct, embarrass or influence the courts in administering justice in a pending case constitutes criminal contempt, but the rule is otherwise after the litigation is ended. (In re: Lozano)

**Rule 13.03. A lawyer shall not brook or invite interference by another branch or agency of the government in the normal course of judicial proceedings.**

Reason: A lawyer who brooks or invites the interference by another branch or agency of government in the normal course of judicial proceedings endangers the independence of the judiciary.

In the case of De Bumanlag vs. Bumanlag, the Supreme Court accordingly administered reprimand to respondent for gross ignorance of the law and the Constitution, having asked the President to set aside by decree of the Court's decision which suspended him from practice of law for two years.

## CHAPTER IV

### THE LAWYER AND THE CLIENT

**CANON 14 — A lawyer shall not refuse his services to the needy.**

*General Rule:*

No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment.

Every lawyer upon his own responsibility must decide what employment he will accept as counsel, what causes he will bring into court for plaintiffs, what case he

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will contest in court for defendants. The responsibility for advising as to questionable defenses is the lawyer's responsibility. He cannot escape it but urging as an excuse that he is only following his client's instructions. (Canon 31, CPE)

### *Exception:*

Except a public prosecutor who cannot choose cases to prosecute, a private practitioner, as a general rule is not obliged to act as counsel for any person who may wish to become his client. (Agpalo)

### **Rule 14.01. A lawyer shall not decline to represent a person solely on account of the latter's race, sex, creed or status of life, or because of his own opinion regarding the guilt of said person.**

Regardless of his personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse. He should take comfort in the fact that history is replete with instances of distinguished and sacrificial services by lawyers who had represented unpopular clients and such services from his peers in the bar. (Comments of IBP)

A lawyer cannot refuse to undertake the defense of an accused person simply because he believes said person is guilty. For if the lawyer does so, he assumes the character of a judge. (Warvelle)

It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise, innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound, by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty but by due process of law. (Canon 5, CPE)

Even if accepting the case the lawyer discovers that his client is guilty, he must still continue with defense of his clients and use all fair arguments arising on evidence. (Warvelle)

In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty is only required, or that degree of proof which produces conviction in an unprejudiced mind (Sec. 2, Rule 133, Revised Rule on Evidence)

### **Rule 14.02. A lawyer shall not decline, except for serious and sufficient cause, an appointment as counsel de officio or as amicus curiae, or a request from the Integrated Bar of the Philippines or any of its chapters for rendition of free legal aid.**

#### **Appointing a Counsel de Officio**

In criminal actions, the Court may appoint a counsel de officio in the following instances:

1. Before arraignment, the court shall inform the accused of his right to counsel and ask him if he desires to have one. Unless the accused is allowed to defend himself in person or has employed a counsel of his choice, the court must assign a counsel de officio to defend him. (Sec. 6, Rule 116, Revised Rules of Criminal Procedures)
2. It shall be the duty of the clerk of the trial court, upon filing of a notice of appeal, to ascertain from the appellant, if confined in prison, whether he desires the Regional Trial Court, Court of Appeals or the Supreme Court to appoint a counsel de officio to defend him and to transmit with the record on a form to be prepared by the clerk of court of the appellate court, a certificate of compliance with this duty and of the response of the appellant to his inquiry. (Sec. 13, Rule 122, Revised Rules of Criminal Procedures)
3. If it appears from the record of the case as transmitted that:
  - (a) the accused is confined in prison,
  - (b) is without counsel de parte on appeal, or
  - (c) has signed the notice of appeal himself, the clerk of court of the Court of Appeals shall designate a counsel de officio.

All courts are cautioned against the frequent appointment of the same attorney as counsel de officio, for two basic reasons:

- a) It is unfair to the attorney concerned, considering the burden of his regular practice that he should be saddled with too many de officio cases; and,
- b) The compensation provided for by section 32 of Rule 138 of the Rules of Court might be considered by some lawyers as a regular source of income, something which the Rule does not envision. The accused stands to suffer because the overburdened counsel would have too little time to spare for his de officio cases, and also would be inordinately eager to finish such cases in order to collect his fees within the earliest possible time.

A court may assign an attorney to render professional aid free of charge to any party in a case, if upon investigation it appears that the party is destitute and unable to employ an attorney, and that the services of counsel are necessary to secure the ends of justice and to protect the rights of the party. It shall be the duty of the attorney so assigned to render the required service, unless he is excused therefrom by the court for sufficient cause shown. (Sec. 31, Rule 138, Rules of Court)

#### **Sec 6, Rule 116, Revised Rules of Criminal Procedure VS. Sec 31, Rule 138, Rules of Court**

<b>Sec 6, Rule 116, Revised Rules of Criminal Procedure</b>	<b>Sec 31, Rule 138, Rules of Court</b>
Appointment of counsel de officio to defend an	Refers to any party in a case other than a

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accused in a criminal case	criminal case where the service of counsel is needed
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Republic Act 6003 directs the courts to give preference to criminal cases where the party or parties involved are indigents. Any willful or malicious refusal on the part of any fiscal or judge to carry out the provisions of this Act shall constitute sufficient ground for disciplinary action which may include suspension or removal. (Sec. 4, RA 6003)

A lawyer who accepts the cause of a person unable to pay his professional fees shall observe the same standard of conduct governing his relations with paying clients (Rule 14.04)

A lawyer may not refuse to accept representation of an indigent client unless:

- a. He is in no position to carry out the work effectively and competently;
- b. He labors under a conflict of interest between him and the prospective client or between a present client and the prospective client (Rule 14.03, CPR)

A lawyer has the duty to decline the professional employment regardless of how attractive the fee offered may be if its acceptance will involve:

- a. Violation of any of the rules of the legal profession (Agpalo)
- b. Matters adversely affecting any interest of his former client with respect to which confidence has been reposed. (Rule 6.03, CPR)
- c. Giving professional advice to plaintiff concerning the latter's claim, and thereafter accepting retainer from defendant to defeat that claim (Hilado vs. David)
- d. Nullification of a contract which he prepared (Bautista vs. Barrios)
- e. Advocacy in any matter in which he had intervened while in the government service. (Rule 6.03, CPR)
- f. Employment and the nature of which might easily be used as a means of advertising his professional services of skill, that is, employment as a columnist to answer inquiries for advice as to individual rights through the medium of a newspaper column. (Canon 40, CPE)
- g. Employment with a collection agency, which solicits business to collect claims. (Canon 35, CPE)
- h. Rendering of legal services to the members of an organization of which he is employed in respect to their individual affairs. (Canon 35, CPE)
- i. Any matter in which he knows or has reason to believe that he or his partner will be an essential witness for prospective client. (Rule 14.03, CPR)
- j. Two government offices takes an adverse position against each other (Republic vs. CA, 200 SCRA 226)

- k. Other analogous cases or similar matters in view of the rule prohibiting representation of conflicting interest.

### Ethical Considerations in Taking Bad Cases:

In criminal case, a lawyer may accept a losing criminal case because:

1. Every accused is presumed innocent until proven guilty and enjoys the right to counsel (Sec. 14, Art. III, 1987 Constitution)
2. It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise, innocent persons, victims only of suspicious circumstances, might be denied proper defense. (Canon 5, CPE)
3. It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

In a civil case, the rules and ethics of the profession enjoin a lawyer from taking a bad case:

1. The signature of counsel constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. (sec 3, Rule 7, Rules of Court)
2. It is the duty of an attorney to counsel or maintain such actions or proceedings only as appear to him to be just, and such defenses only as he believes to be honestly debatable under the law. (Sec. 20[c], Rule 138, Rules of Court)
3. The lawyer must decline to conduct a civil cause or to make a defense when convicted that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. (Canon 30, CPE)
4. It is the duty of an attorney not to encourage either the commencement or the continuance of an action or proceeding, or delay any man's cause, from any corrupt motive or interest" (Sec. 20[g], Rule 138, Rules of Court)

### Rule 14.03. A lawyer may not refuse to accept representation of an indigent client if:

- (a) he is not in a position to carry out the work effectively or competently;
- (b) he labors under a conflict of interest between him and the prospective client or between a present client and the prospective client.

### Rule 14.04. A lawyer who accepts the cause of a person unable to pay his professional fees shall observe the same standard of conduct governing his relations with paying clients.

## BASIC LEGAL ETHICS NOTES

**CANON 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.**

**Rule 15.01.** A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.

**Rule 15.02.** A lawyer shall be bound by the rule on privilege communication in respect of matters disclosed to him by a prospective client.

A lawyer shall preserve the confidences and secrets of his clients even after the attorney-client relationship is terminated. (Canon 21,CPR)

**Reason:** The purpose of an attorney-client privilege is to encourage a client to make full disclosure to his attorney and to place unrestricted confidence in him in matters affecting his right or obligation. The privilege which is founded on grounds of public proceeds on the premise that the benefits derived therefrom justify the risk that unjust decisions may sometimes result from suppression of relevant evidence. (San Francisco vs. Superior Court of San Francisco)

The lawyer's duty to maintain inviolate his client's confidence is perpetual. It outlasts his professional employment and continues even after the client's death for professional confidence once reposed cannot be divested by the expiration of the professional relationship or the death of the client. (Hilado vs. David)

The mere relationship of attorney and client does not raise a presumption of confidentiality. (Hiltpod vs. Stern)

The client must intend the communication to be confidential. (Uy Chico vs. Union Life)

It is the duty of an attorney to maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client. (Sec. 20[e], Rule 138, Rules of Court).

To such end, the Rules implementing such Canon require:

- a. Rule 21.01 - A lawyer shall not reveal the confidences or secrets of his client.
- b. Rule 21.02 - A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.
- c. Rule 21.03 - A lawyer shall not, without the written consent of his client, give information from his files to an outside agency seeking such information for auditing, statistical, bookkeeping, accounting, data processing, or any similar purpose.
- d. Rule 21.04 - A lawyer may disclose the affairs of a client of the firm to partners or associates thereof unless prohibited by the client.
- e. Rule 21.05 - A lawyer shall adopt such measures as may be required to prevent those whose services are utilized by him, from

disclosing or using confidences or secrets of the clients.

- f. Rule 21.06 - A lawyer shall avoid indiscreet conversation about a client's affairs even with members of his family.
- g. Rule 21.07 - A lawyer shall not reveal that he has be

### Exceptions:

- a. When authorized by the client after acquainting him of the consequences of the disclosure (Rule 21.01[a], CPR)
- b. When required by law (Rule 21.01[b], CPR)
- c. When necessary to collect his fees or to defend himself, his employees or associates or by judicial action (Rule 21.01[c], CPR)
- d. If a lawyer is accused by his client, he is not precluded from disclosing the truth in respect to the accusation. (Canon 37, CPE)
- e. The announced intention of a client to commit a crime is not included within the confidence which he is bound to respect. (Canon 37, CPE)
- f. Communications seeking advice as to the commission of a fraud or the establishment of a false claim. (Clark vs. US)
- g. But as to a third person who may have overheard confidential communication, the privilege does not as a rule apply. (Barton vs. Leyte Asphalt Mineral)

In Campos Jr vs. Atty Estebal, the lawyer violated Canon 15 for the reason that he was not candid enough to complain about their chances of getting a US Visa. Instead, the respondent made the complaints believe that they will have a good chance of getting the US Visa if they will be

### Attorney Client Privilege Communication Rule:

1. A lawyer breached her duty of preserving the confidence of the client where the documents shown and the information revealed in confidence to her in the course of the legal constitution were subsequently used as bases in the criminal and administrative complaints lodged against the client. (Hadjula vs. Madianda)
2. The moment the complaint approached the then receptive lawyer-friend to seek legal advice, a veritable lawyer-client relationship evolved between the two which imposes upon the lawyer certain restrictions circumscribed by the ethics of the profession (Haduka vs. Madianda). Acceptance of money from a client establishes an attorney-client relationship (Ramos vs. Imbag). Respondent's acceptance of payment for her professional fees and miscellaneous expenses, together with the records of the case, effectively bars her from disclaiming the existence of an attorney-client relationship between her and the complainant (Villaflores vs. Limos).
3. The Supreme Court, in Mercado vs. Vitriolo, synthesizes the rule on attorney-client privilege, lists the factors that complainant who claims that the lawyer has violated the attorney-client privilege, must prove for the rule to apply as follows:
  - a. There exists an attorney-client relationship or a prospective attorney-client relationship, and it is by

## BASIC LEGAL ETHICS NOTES

relationship that the client made the communication.

- b. The client made the communication in confidence; the client must intend the communication to be confidential.
- c. The legal advice must be sought from the attorney in his professional capacity.

4. The attorney-client relationship is not destroyed by the fact that a third person may have overheard a communication intended to be confidential nor by the circumstance that other attorneys represented the client (People vs. Decina).

5. The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend the communication to be confidential. A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given. (Rosa Mercado vs. Atty. Julito Vitriolo)

6. The agency created between a counsel and a client is a highly fiduciary relationship. A counsel becomes the eyes and ears in the prosecution or defense of his or her client's case. This is inevitable because a competent counsel is expected to understand the law that frames the strategies he or she employs in a chosen legal remedy. Counsel carefully lays down the procedure that will effectively and efficiently achieve his or her client's interests. Counsel should also have a grasp of the facts, and among the plethora of details, he or she chooses which are relevant for the legal cause of action or defense being pursued.

It is these indispensable skills, among others, that a client engages. Of course, there are counsels who have both wisdom and experience that give their clients great advantage. There are still, however, counsels who wander in their mediocrity whether consciously or unconsciously.

The state does not guarantee to the client that they will receive the kind of service that they expect. Through this court, we set the standard on competence and integrity through the application requirements and our disciplinary powers. Whether counsel discharges his or her role to the satisfaction of the client is a matter that will ideally be necessarily monitored but, at present, is too impractical.

Besides, finding good counsel is also the responsibility of the client especially when he or she can afford to do so. Upholding client autonomy in these choices is infinitely a better policy choice than assuming that the state is omniscient. Some degree of error must, therefore, be borne by the client who does have the capacity to make choices. This is one of the bases of the doctrine that the error of counsel visits the client. This court will cease to perform its social functions if it provides succor to all who are not satisfied with the services of their counsel. (Henry Ong Lay Hin vs. CA)

**Rule 15.03. A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.**

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose. (Canon 6, CPE)

A lawyer may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflicts with that of his present or former client. The test is whether, on behalf of one client, it is the lawyer's duty to contest for that which his duty to another client requires him to oppose or when the possibility of such a situation will develop. The rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. (Heirs of Lydio Falame vs. Baguio)

The prohibition against representing conflicting interests is absolute and the rule applies even if the lawyer has acted in good faith and with no intention to represent conflicting interests. Lawyers are expected not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice. (Daria Daring vs. Atty. Tingalon)

Jurisprudence has provided three tests in determining whether a lawyer is guilty of representing conflicting interests:

One test is whether a lawyer is duty-bound to fight for an issue or claim on behalf of one client and, at the same time, to oppose that claim for the client.

**Rule 15.04. A lawyer may, with the written consent of all concerned, act as mediator, conciliator or arbitrator in settling disputes.**

**Rule 15.05. A lawyer when advising his client, shall give a candid and honest opinion on the merits and probable results of the client's case, neither overstating nor understating the prospects of the case.**

**Rule 15.06. A lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body.**

**Rule 15.07. A lawyer shall impress upon his client compliance with the laws and the principles of fairness.**

A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards courts, judicial officers, jurors, witnesses and suitors. If a client persist

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in such wrongdoings the lawyer should terminate their relation. (Canon 16,CPE)

**Rule 15.08. A lawyer who is engaged in another profession or occupation concurrently with the practice of law shall make clear to his client whether he is acting as a lawyer or in another capacity.**

Engaging in business or other lawful calling entirely apart from the attorney's practice is not necessarily improper. (Agpalo)

Impropriety "arises when the business is of such nature or is in such manner as to be inconsistent with the lawyer's duties as a member of the bar" (ABA, op 57), that is, when such business can be used as a cloak for indirect solicitation. The reason is that certain ethical considerations governing the attorney-client relationship may operate in one and not in the other. (Comments, IBP Committee, p. 84)

**CANON 16 — A lawyer shall hold in trust all moneys and properties of his client that may come into his profession.**

**Rule 16.01. A lawyer shall account for all money or property collected or received for or from the client.**

A fiduciary relationship exists as a matter of law between attorney and client, which requires all dealings growing out of such relationship to be subject to the closest judicial scrutiny (Hilado vs. David).

The relation between an attorney and client is highly fiduciary in nature and of a very delicate, exacting and confidential character. It demands of an attorney of an undivided allegiance, a conspicuous and high degree of good faith, disinterestedness, candor, fairness, loyalty, fidelity and absolute integrity in all his dealings and transactions with his clients and an utter renunciation of every personal advantage conflicting in any way, directly or indirectly, with the interests of his clients. (Daroy vs. Legaspi)

The circumstances that an attorney has a lien for his attorney's fees on the money in his hands collected for his clients does not relieve him from the obligation to make prompt accounting. (Ibid.)

He may not, in the absence of authority from his client, disburse the money collected for his client in favor of persons who may be entitled thereto, he owing fidelity to the former and not to the latter. (In re Abad)

A lawyer may not be allowed to profit from an ingenious scheme to circumvent the statutory prohibition against the acquisition of the client's property in litigation. Neither may he be permitted, in his relation with his client or third party, to plead ignorance of or lack familiarity with the intricacies of the law. (Dacanay vs. Leonardo)

Money received by a lawyer from a person who is not his client is also held by him in trust and he is under the obligation to account for it. (Penticostes vs. Ibanez)

His act of collecting unreasonable fees may amount to a retention of his client's funds and constitute professional indiscretion or misconduct. (In re Tuason)

Well settled is the rule that lawyers are not entitled to unilaterally appropriate their client's money for themselves by the mere fact that the client's owe them attorney's fees. (Sison vs. Camacho)

**Rule 16.02. A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.**

**Rule 16.03. A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.**

A lawyer who obtained possession of the funds and properties belonging to his client in the course of his professional employment shall deliver the same to his client when:

- a. They became due
- b. Upon demand

The failure of an Attorney to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice of and in violation of the trust reposed in him by the client. (Manaloto vs. Reyes)

Rule 16.03 of the Code, however, allows the lawyers to "apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his clients. Without the client's consent, the lawyer has no authority to apply the client's money to his client, without prejudice to his filing a case to recover his unsatisfied fees. (Gonato vs. Adaza)

The fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client. Money entrusted to a lawyer for a specific purpose but not used for the purpose should be immediately returned. A lawyer's failure, to return upon demand, the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality as well as of professional ethics. It impairs public confidence in the legal profession and deserves punishment. (Sison vs. Atty. Camacho)

It is settled that the unjustified withholding of money belonging to a client warrants the imposition of disciplinary action. "A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality as well as of professional ethics. It

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impairs public confidence in the legal profession and deserves punishment." (Goliman vs. Amboy)

A lawyer is obliged to render a prompt accounting of all the property and money he has collected for his client." "The fact that a lawyer has a lien for his attorney's fees on the money in his hands collected for his client does not relieve him from the obligation to make a prompt accounting." Moreover, a lawyer has no right "to unilaterally appropriate his client's money for himself by the mere fact alone that the client owes him attorney's fees. (Viray vs. Sanicas)

Thus, failure to immediately account for and return the money when due and upon demand violated the trust reposed in him, demonstrated his lack of integrity and moral soundness, and warrants the imposition of disciplinary action." (Viray vs. Sanicas)

**Rule 16.04. A lawyer shall not borrow money from his client unless the client's interest are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client.**

Two parts of the rule against borrowing or lending fro or to a client:

- a. Prevent the lawyer from taking advantage of his influence over the client
- b. Assure the lawyer's independent professional judgement, for if the lawyer acquires financial interest in the outcome of the case the free exercise of his judgement may be adversely affected.

Exceptions:

- a. Borrowing money from a client bank — here the client's interest is protected by the bank's rules and regulations which have to be complied with. (Pineda)
- b. In the interest of justice, he has to advance necessary expenses in a legal matter he is handling for a client.

Note that the advances made shall be subject to reimbursement. Otherwise, if the lawyer spends for all the legal expenses, his contract of legal employment might become champertous. (Bautista vs. Gonzales)

The Code of Professional Responsibility demands the utmost degree of fidelity and good faith in dealing with the moneys entrusted to lawyers because of their fiduciary relationship." Any lawyer who does not live up to this duty must be prepared to take the consequences of his waywardness. (Datu Ismael Malangas vs. Atty. Zaide)

**CANON 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.**

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his

rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public popularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery, he must obey his own conscience and not that of his client. (Canon 15, CPE)

A lawyer, when he undertakes his client's cause, he made a covenant that he will exert all efforts for its prosecution until its final conclusion. He should undertake the task with dedication and care, and if he should do no less, then he is not true to his lawyer's oath. (PANELCO I vs. Atty. Montemayor)

Canon 19 of the CPR mandates lawyers to represent their clients with zeal but within the bounds of the law. (Sebastian vs. Bajar)

A lawyer's duty is not to his client's success is wholly subordinate; and his conduct ought to and must always be scrupulously observant of the law and ethics. (Maglasang vs. People)

It bears stressing that from the time a lawyer accepts a case, he binds himself to serve and protect his client's interest to the best of his ability. He undertakes to exert all legal efforts to pursue the cause of his client and help him exhaust all available remedies.(Hermano vs. Atty. Igmedio)

**CANON 18 — A lawyer shall serve his client with competence and diligence.**

The interest of the public requires that the personal, confidential and fiduciary relation between attorney and client be preserved and protected. (Daroy vs. Legaspi)

Rules have been promulgated for the purpose of protecting for that people, which are in the nature of injunctions peculiarly addressed to an attorney:

- a. He is to exert his best effort and learning in the protection of his client
- b. He is to promptly account for any fund or property entrusted by or received for his client
- c. He is not to purchase or acquire any property or interest of his client in litigation
- d. He is to forever keep inviolate his client's secrets or confidence and not to abuse them
- e. He is not to represent a party whose interest is adverse to that of his client even after the termination of the relation. (Acpalo)

The attorney's duty to safeguard the client's interest commences from the case or the final disposition of the whole subject matter of the litigation.

It must be stressed that a lawyer-client relationship is highly fiduciary in nature. The Code of Professional Responsibility mandates every lawyer to observe

## BASIC LEGAL ETHICS NOTES

candor, fairness and loyalty in all his dealings and transactions with his client and to serve them with competence and diligence. It is the duty of every lawyer to give adequate attention and time to every case entrusted to him<sup>47</sup> and to exert his best judgment in the prosecution or defense thereof and to exercise reasonable and ordinary care and diligence in the pursuit or defense of the case. (Cagayan Economic Zone vs. Meridien Vista)

A lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to the counsel's care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him or her to do so. (Cabilles vs. Atty. Cedo)

Conversely, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action. While such negligence or carelessness is incapable of exact formulation, the Court has consistently held that the lawyer's mere failure to perform the obligations due his client is *per se* a violation. (Cabilles vs. Atty. Cedo)

A client who deals with counsel has the right to expect not just a good amount of professional learning and competence, but also a wholehearted fealty to the client's cause. Thus, we find that passing the blame to persons not trained in remedial law is not just wrong; it is reflective of the want of care on the part of lawyers handling the legal matters entrusted to them by their clients. (Heirs of Sixto Tan Sr. vs Beltran)

**Rules 18.01. A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.**

The lawyer should recognize his lack of competence for a particular task and the disservice he would do his clients if he undertook that task. If he is consulted in such circumstance he should either decline to act, or obtain his client's instructions to retain, consult, or collaborate with experts in that field. He should not also recognize the advice from or collaborate with experts in scientific, accounting or other non-legal fields. (Report of IBP Committee)

**Rule 18.02. A lawyer shall not handle any legal matter without adequate preparation.**

Preparation begins in the lawyer's office. As often noted by jurists, most cases are won within the four walls of the attorney's law office even before he goes to court, through hard work and preparation. (Justice Salvador Esguerra)

**Rule 18.03. A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.**

A lawyer must exercise ordinary diligence or that reasonable degree of care and skill having reference to the character of the business he undertakes to do so, as any other member of the bar similarly situated commonly possesses and exercises. He is bound to exercise ordinary diligence. (Pajarillo vs. WCC)

A client is bound by the acts, even mistakes of his counsel in the realm of procedural technique. However, if the client is prejudiced by his lawyer's negligence or misconduct, he may recover damages against his counsel. (Isaac vs. Mendoza)

However, for the lawyers to be liable, his failure to exercise reasonable care, skill and diligence must be the proximate cause of the loss. (National Savings Bank vs. Ward)

A client is bound by the negligence of his counsel. A counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself. A recognized exception to the rule is when the reckless or gross negligence of the counsel deprives the client of due process of law. For the exception to apply, however, the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him. (Crisologo vs. Vda. de Culig)

**Rule 18.04. A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.**

There is an ever present need for the client's being adequately and fully informed and should not be left in the dark as to the mode and the manner in which his interests are being defended. (Alcala vs. De Vera)

A lawyer should not also give erroneous information to the client regarding the case. Such an act is often the root of an unpleasant relationship between them. (Katinig vs. Brillantes)

A litigant bears the responsibility to monitor the status of his case, for no prudent party leaves the fate of his case entirely in the hands of his lawyer. Petitioner should have maintained contact with her counsel from time to time, and informed herself of the progress of their case, thereby exercising that standard of care "which an ordinarily prudent man bestows upon his business." (Crisologo vs. Vda. de Culig)

The client "should never be left groping in the dark" and instead must be "adequately and fully informed about

## BASIC LEGAL ETHICS NOTES

the developments in his case." (Tejano vs. Atty. Baterina)

A lawyer practically abandoned this duty when he allowed the proceedings to run its course without any effort to safeguard his clients' welfare in the meantime. His failure to file the required pleadings on his clients' behalf constitutes gross negligence in violation of the Code of Professional Responsibility and renders him subject to disciplinary action. The penalties for a lawyer's failure to file the required brief or pleading range from warning, reprimand, fine, suspension, or in grave cases, disbarment. (Tejano vs. Atty. Baterina)

### **CANON 19 — A lawyer shall represent his client with zeal within the bounds of the law.**

It is a well-established rule that the acts of the counsel bind the client. However, as dispensers of justice, the Court is inclined not to allow the inadvertence or incompetence of any counsel to the result in the outright deprivation of an appellant's right to life, liberty, and property. The people whose futures hang in a balance should not be left to suffer from the incompetence, mindlessness or lack of professionalism of any member of the Law Profession. (Diaz vs. People, GR 180677)

For lawyers to resort to unscrupulous practices for the protection of the supposed rights of their clients defeats one of the purposes of the state the administration of justice. While lawyers owe their entire devotion to the interest of their clients and zeal in the defense of their client's right, they should not forget that they are, first and foremost, officers of the court, bound to exert every effort to assist in the speedy and efficient administration of justice. (Rolando Tolentino vs. Atty. Cristina Guiao-Garcia)

**Rule 19.01. A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.**

**Rule 19.02. A lawyer who has received information that his client has, in the course of the representation, perpetrated a fraud upon a person or tribunal, shall promptly call upon the client to rectify the same, and failing which he shall terminate the relationship with such client in accordance with the Rules of Court.**

**Rule 19.03. A lawyer shall not allow his client to dictate the procedure in handling the case.**

**CANON 20 — A lawyer shall charge only fair and reasonable fees.**

### **Attorney's Fees**

Attorney's fee is understood both in its ordinary and extraordinary concept. In its ordinary concept, attorney's fee refers to the reasonable compensation paid to a lawyer by his client for legal services rendered. While, in its extraordinary concept, attorney's fee is awarded by

the court to the successful litigant to be paid by the losing party as indemnity for damages. (Ignacio vs. Atty. Alviar)

1. **Acceptance Fee** — An acceptance fee is not a contingent fee, but is an absolute fee arrangement which entitles a lawyer to get paid for his efforts regardless of the outcome of the litigation. (Yu vs. Bondal)
2. Every attorney is entitled to have and receive a just and reasonable compensation for services performed at the special instance and request of his client. As long as the attorney is in good faith and honestly trying to represent and serve the interests of the client, he should have a reasonable compensation for such services. (Sanchez vs. Atty. Aguilos)
3. **Contingency Fee Arrangements** —
  - a. A contract for a contingent fees is an agreement in writing by which the fees, usually a fixed percentage of what may be recovered in the action, are made to depend upon the success in the effort to enforce or defend a supposed right. Contingent fees depend upon an express contract, without which the attorney can only recover on the basis of quantum meruit. (National Corp. vs. Heirs of Macabangkit Sangkay)
  - b. Contingent fee contracts are permitted in this jurisdiction because they redound to the benefit of the poor client and the lawyer "especially in cases where the client has meritorious cause of action, but no means with which to pay for legal services unless he can, with the sanction of law, make a contract for a contingent fee to be paid out of the proceeds of litigation. Oftentimes, the contingent fee arrangement is the only means by which the poor clients can have their rights vindicated and upheld." Further, such contracts are sanctioned by Canon 13 of the Canons of Professional Ethics. (Villarama vs. Atty. De Jesus)
4. **Quantum Meruit** — Literally means as much as he deserves, is used as a basis for determining an attorney's fees in the absence of express agreement. The recovery of attorney's fees on the basis of quantum meruit is a device that prevents an unscrupulous client from running away with the fruits of the legal services of the counsel without paying for it and also avoids unjust enrichment on the part of the attorney himself.
  - a. The courts supervision of the lawyer's compensation for legal services rendered is not only for the purpose of ensuring the reasonableness of the amount of attorney's fees charged, but also for the purpose of preserving the dignity and integrity of the legal profession. (Sanchez vs. Atty. Aguilos)
  - b. The attorney who fails to accomplish the tasks he should naturally and expectedly perform during his professional engagement does not discharge his professional responsibility and ethical duty toward his client. The respondent was thus guilty of misconduct, and may be sanctioned according to the degree of the misconduct. As a consequence, he may be ordered to restitution to the client the amount received from the latter in consideration of the professional engagement, subject to the rule

## BASIC LEGAL ETHICS NOTES

on quantum meruit, if warranted. (Sanchez vs. Atty. Aguilos)

**Rule 20.01. A lawyer shall be guided by the following factors in determining his fees:**

- (a) the time spent and the extent of the service rendered or required;
- (b) the novelty and difficulty of the questions involved;
- (c) The importance of the subject matter;
- (d) The skill demanded;
- (e) The probability of losing other employment as a result of acceptance of the proffered case;
- (f) The customary charges for similar services and the schedule of fees of the IBP chapter to which he belongs;
- (g) The amount involved in the controversy and the benefits resulting to the client from the service;
- (h) The contingency or certainty of compensation;
- (i) The character of the employment, whether occasional or established; and
- (j) The professional standing of the lawyer.

### Champertous Contract vs. Contingent Fee

Contingent fees may be paid in cash, whereas a comperty can be paid only in kind.

Counsel does not undertake to bear all the expenses of litigation, whereas in the latter, there is an undertaking that a lawyer will conduct litigation on his own account, to pay expenses thereof and to receive as his fee a portion of the proceeds of a judgment. (Pineda)

Acceptance of an initial fee or during the progress of the litigation does not detract from the contingent nature of the fees, as long as the bulk thereof is made dependent upon the successful outcome of the action. (Francisco vs. Matias)

Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

A charging or special lien is an attorney's specific lien for the compensation on the fund or judgement which he has recovered by means of his professional services for his client in a particular case. The lien shall attach to the proceeds of the judgement and the client who receives the same, without paying his attorney who was responsible for its recovery, shall hold said proceeds in

trust for his lawyer to the extent of the value of the lawyer's recorded lien. (NPC Drivers vs. NPC)

A charging lien, to be valid as security for payment of attorney's fees and lawful disbursements, requires that the following requisites must concur:

1. There must be an attorney-client relationship
2. The attorney has rendered services
3. A money judgement favorable to the client has been secured in the action
4. The attorney has a claim for attorney's fees or advances
5. A statement of his claim has been duly recorded in the case with notice thereof served upon the client and the adverse party

Lastly, the enforcement of a charging lien can only take place after a final money judgment has been rendered in favor of the client. The lien only attaches to the money judgment due to the client and is contingent on the final determination of the main case. Until the money judgment has become final and executory, enforcement of the lien is premature. (Navarez vs. Atty. Abrogar III)

### Retaining Lien

A lawyer who withdraws or is discharged shall, subject to a retainer lien, immediately turn over all papers and property to which the client is entitled, and shall cooperate with his successor in the orderly transfer of the matter, including all information necessary for the proper handling of the matter. (Rule 22.02, CPR)

See Rule 16.03

In order that a retaining lien be valid and accorded full protection there must be present the following requisites:

- a. Attorney-client relationship
- b. Lawful possession by the lawyer of the client's funds, documents and papers in his professional capacity
- c. Unsatisfied claim for attorney's fees or disbursement

The retaining lien attaches from the moment the attorney lawfully obtains and retains possession of the funds, documents and papers of the client. The lawyer's position is similar to that of a creditor who holds an attachment lien over the property, and the client-debtor must discharge the lien over the property, before he can dispose of the property to third parties. (Rustia vs. Abeto)

The lawyer need not file an action in the court to enforce his retaining lien and recover his fees and disbursements if what he retains in the exercise of his lien refers to funds or money of the client that lawfully comes into his possession and the client does not dispute his claim for attorney's fees and the amount thereof. In such a case, the lawyer may lawfully apply the client's funds in satisfaction of his claim for attorney's fees and disbursements. (Jesus-Alano vs. Tan)

**Rule 20.02. A lawyer shall, in case of referral, with the consent of the client, be entitled to a division of**

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fees in proportion to the work performed and responsibility assumed.

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**Rule 20.03.** A lawyer shall not, without the full knowledge and consent of the client, accept any fee, reward, costs, commission, interest, rebate or forwarding allowance or other compensation whatsoever related to his professional employment from anyone other than the client.

**Rule 20.04.** A lawyer shall avoid controversies with clients concerning his compensation and shall resort to judicial action only to prevent imposition, injustice or fraud.

Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self respect and with his right to receive reasonable recompense for his service; and lawsuits with the clients should be resorted to only to prevent injustice, imposition or fraud. (Canon 14, CPE)

When proper, the lawyer can pursue judicial actions to protect or collect attorney's fees due him. He has two options:

- a. In the same case, he may enforce his attorney's fees by filing an appropriate motion for petition. (Lichauco vs. CA)
- b. In a separate and independent civil action. (NWSA Consolidated Union)

**CANON 21** — A lawyer shall preserve the confidence and secrets of his client even after the attorney-client relation is terminated.

**Rule 21.01.** A lawyer shall not reveal the confidences or secrets of his client except;

- (a) When authorized by the client after acquainting him of the consequences of the disclosure;
- (b) When required by law;
- (c) When necessary to collect his fees or to defend himself, his employees or associates or by judicial action.

**Rule 21.02.** A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.

**Rule 21.03.** A lawyer shall not, without the written consent of his client, give information from his files to an outside agency seeking such information for auditing, statistical, bookkeeping, accounting, data processing, or any similar purpose.

**Rule 21.04.** A lawyer may disclose the affairs of a client of the firm to partners or associates thereof unless prohibited by the client.

**Rule 21.05.** A lawyer shall adopt such measures as may be required to prevent those whose services

are utilized by him, from disclosing or using confidences or secrets of the clients.

**Rule 21.06.** A lawyer shall avoid indiscreet conversation about a client's affairs even with members of his family.

**Rule 21.07.** A lawyer shall not reveal that he has been consulted about a particular case except to avoid possible conflict of interest.

**CANON 22** — A lawyer shall withdraw his services only for good cause and upon notice appropriate in the circumstances.

**Rule 22.01.** A lawyer may withdraw his services in any of the following case:

- (a) When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;
- (b) When the client insists that the lawyer pursue conduct violative of these canons and rules;
- (c) When his inability to work with co-counsel will not promote the best interest of the client;
- (d) When the mental or physical condition of the lawyer renders it difficult for him to carry out the employment effectively;
- (e) When the client deliberately fails to pay the fees for the services or fails to comply with the retainer agreement;
- (f) When the lawyer is elected or appointed to public office; and
- (g) Other similar cases.

- When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling

If the client insists upon an unjust or immoral course in the conduct of his case, or if he persists over the attorney's remonstrance in presenting frivolous defense, or if he deliberately disregards an agreement or obligation as to fees or expenses, the lawyer may be warranted in withdrawing on due notice to the client, allowing him time to employ another.

- When the client insists that the lawyer pursue conduct violative of these canons and rules

A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrong-doings the lawyer should terminate their relationship. (Canon 16, CPR)

**Rule 22.02.** A lawyer who withdraws or is discharged shall, subject to a retainer lien, immediately turn over all papers and property to which the client is entitled, and shall cooperate with his successor in the orderly transfer of the matter, including all

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**information necessary for the proper handling of the matter.**

### Procedure of Withdrawal

1. A lawyer who desires to retire from an action without the written consent of his client must file a petition for withdrawal in court.
2. He must serve a copy of his petition upon his client and the adverse party at least three days before the date set for hearing, otherwise the court may treat the application as a mere scrap of paper.
3. He should moreover present his petition well in advance of the trial of the action to enable the clients to secure the service of another lawyer.
4. If the application is filed under the circumstance that does not afford a substitute counsel sufficient to prepare for trial or that work prejudice to the client's cause, the court may deny his application and require him to conduct the trial.
5. An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

8. Probation — it is the sanction that allows a lawyer to practice law under specified conditions.

## SUSPENSION, DISBARMENT AND DISCIPLINE OF LAWYERS

### Forms of Disciplinary Measures

1. Warning — an act or fact of putting one on his guard against an impending danger, evil consequence, or penalty.
2. Admonition — a gentle or friendly reproof, mild rebuke, warning, reminder or counseling on a fault, error or oversight, an expression of authoritative advice.
3. Suspension — temporary withholding of a lawyer's rights to practice his profession as a lawyer for a certain period or for an indefinite period of time.
4. Indefinite-qualified disbarment — lawyer determines for himself how long or short his suspension shall last by proving to court that he is once again fit to resume practice of law.
5. Censure — official reprimand.
6. Disbarment — the act of the Philippine Supreme Court of withdrawing from an attorney the right to practice law. The name of the lawyer is stricken from out from the Roll of Attorneys.
7. Interim Suspension — the temporary suspension of a lawyer from the practice of law pending imposition of final discipline
  - a. Suspension upon conviction of a serious crime
  - b. Suspension when the lawyers continuing conduct is or is likely to cause immediate and serious injury to a client or public